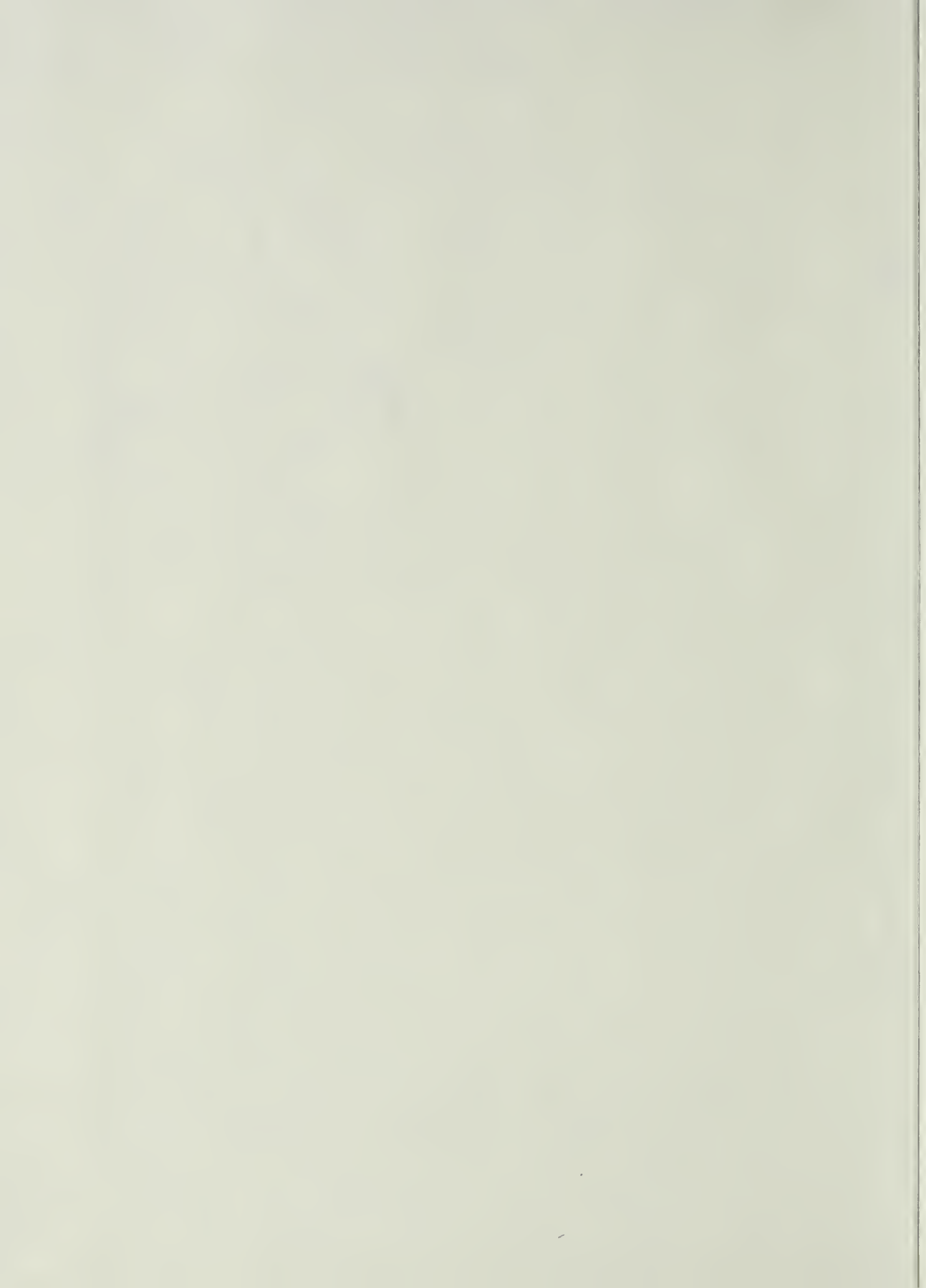
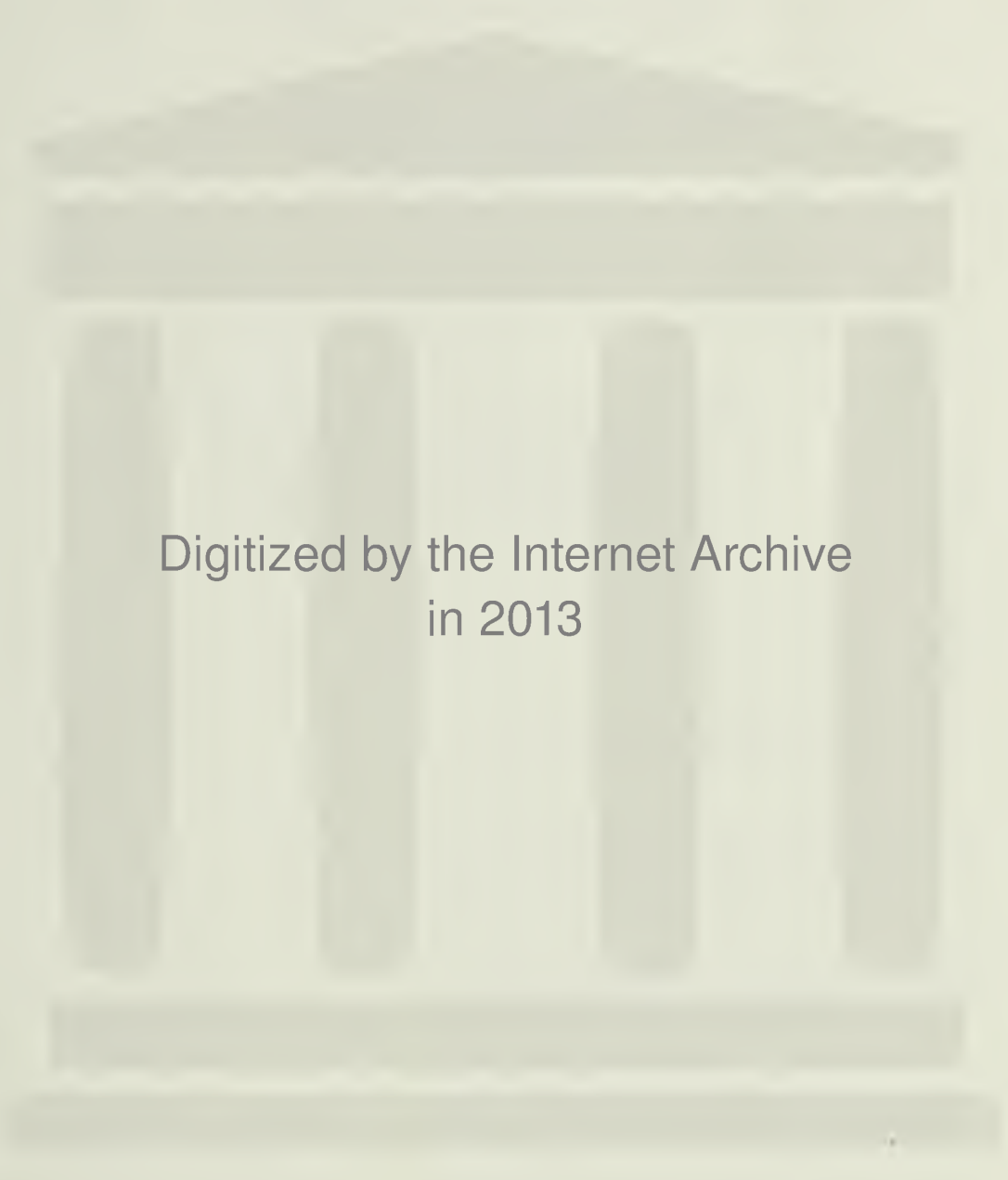
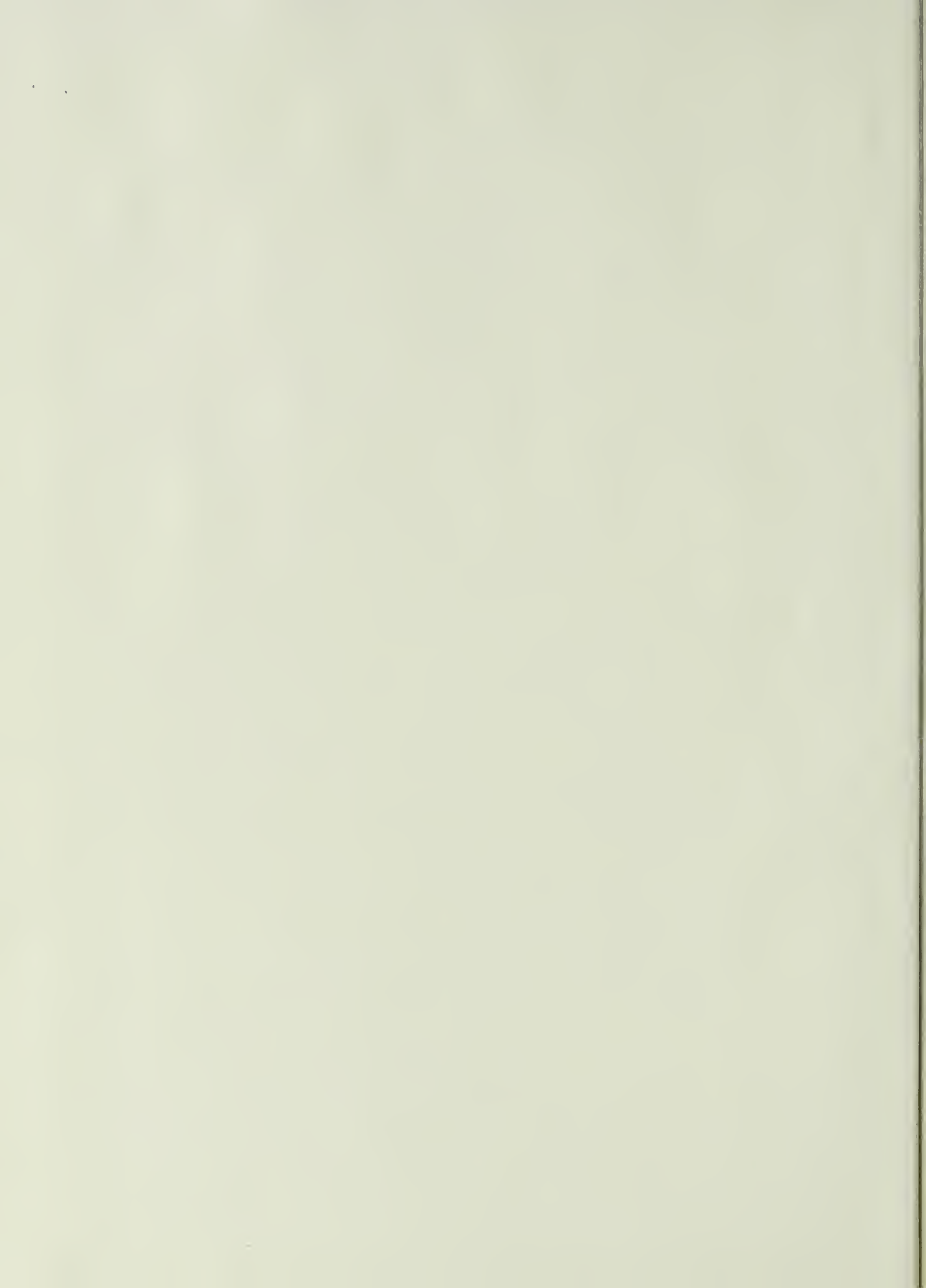






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COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS COMMISSION AGAINST
DISCRIMINATION

First Ninety Day Report To The
Governor And Clerks Of The
Senate And House Pursuant To
Ch. 463 Of The Acts Of 1976

Respectfully submitted,

JANE C. EDMONDS, Chairman

ALEX RODRIGUEZ, Commissioner

SAM STONEFIELD, Commissioner

June 13, 1977

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State House, Boston

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This report is respectfully submitted by the three Commissioners of the Massachusetts Commission Against Discrimination pursuant to the mandate of Chapter 463 of the Acts of 1976.

I. INTRODUCTION

The Massachusetts Commission Against Discrimination was created by the legislature in 1946. When created, the Commission was known as the Massachusetts Fair Employment Practice Commission. In 1950, by legislative amendment, its name and caption was changed to the Massachusetts Commission Against Discrimination. Over the years to date, the Commission has seen multiple changes in its statutory mandate, primarily in the form of increased jurisdiction. The jurisdictional increases have generally anticipated the changes in and on the federal level and have made the Massachusetts Commission Against Discrimination a forerunner in the fight against discriminatory practices in employment, housing, education and in places of public accommodation. Indeed, some Massachusetts anti-discrimination legislation goes back to the late 1800's.

However, the anti-discrimination legislation or protective legislation so-called, had no forum for enforcement until the creation of the Commission Against Discrimination or the then Fair Employment Practice Commission. In its early days, the Commission was organized as an entity managed by a part-time appointing authority. The Commission was headed by

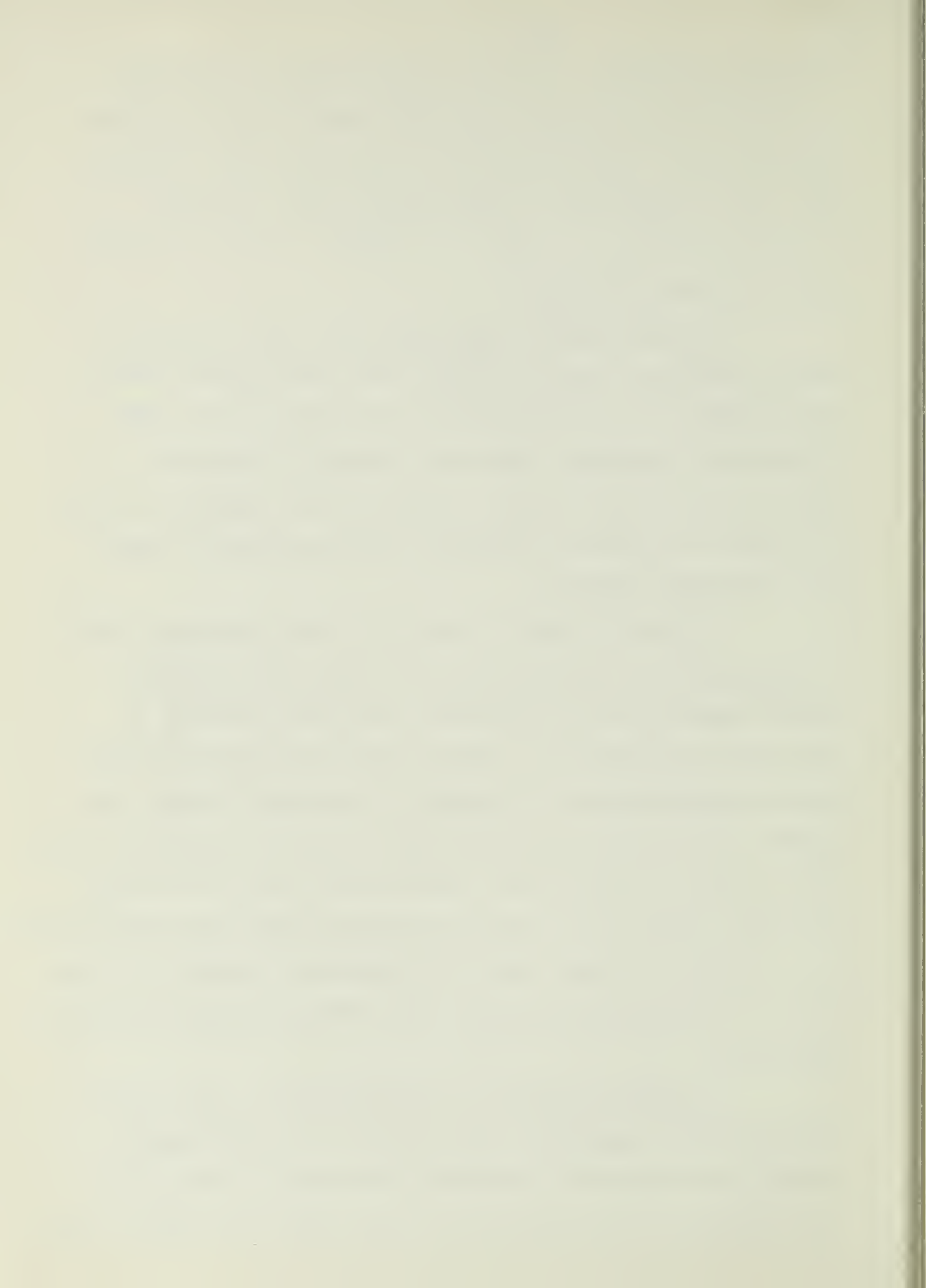


a Chairman and three part-time Commissioners with salaries of \$5,000 for the Chairman and \$4,000 each for the associate Commissioners. These salaries over the years were increased from time to time reaching their peak in 1974, when the Chairman's salary was increased to \$10,384 and the associate members salaries to \$9,460.

Notwithstanding these increases, both private and public management studies indicate that the salaries of the Commissioners were substantially lower than those of other similar state agencies. There was a general feeling and belief that the low salaries granted to this Commission reduced the number of candidates available for appointment to these very important positions.

In the late 1960's and early 1970's, multiple studies by Legislative and Administrative Law Committees, Special Panels appointed by the Executive, and other observers of government organizations, reviewed the organization of other state anti-discrimination agencies. The studies covered the gambit from agencies headed by strong executive secretaries with ten or more part-time unpaid Commissioners acting as hearing officers, to one or two agencies headed by full-time Commissioners. While rare, this latter form of organization appeared, at first blush, to be the most manageable and efficient form of appointing authority.

As early as 1970, and contemporaneous with some of these studies, legislation was drafted by the MCAD General Counsel and supporting legislators attempting to reorganize the MCAD at its top echelon by creating full-time Commissioners.



The rationale for full-time Commissioners seems to have been grounded upon two basic concepts. First, the operation by part-time Commissioners of a state agency with a budget of almost one million dollars appeared to some observers to be absurd, a waste of resources and bad management. Second, those individuals firmly committed to the concept of equality and powerful enforcement of civil rights recognized early that the civil rights movement and the protective legislation already on the books required a full-time commitment, and not part-time Commissioners. Other agencies of state government dealing with less substantive issues and problems were being governed by well paid agency heads or Commissioners.

Steeped in this background, the Commission made its first attempt at reorganization during the 1971 legislative session, when the then Chairman of the MCAD, with the assistance of then Representative Peter Masnick and the former Attorney General of the Commonwealth of Massachusetts, Robert H. Quinn, filed the first petition seeking to make the Commissioners of the agency full-time.

This legislation would have reduced the number of Commissioners from four to three, making each of the three Commissioners full-time, with a salary of \$18,500^{1/} for the Chairman and \$15,500 for the associate members.

^{1/} The modest salaries attached to the bill were intended to induce the budget conscious legislature to approve this reorganization package.



This legislation and several other bills filed during the following years failed to muster the necessary support in either the House or the Senate to be passed. The next major effort by the Commission to secure a full-time appointing authority came in 1974. During the 1974 session, Representative Charles Flaherty and Senator Joseph DiCarlo filed similar bills in the House and in the Senate to make changes in the Massachusetts Commission Against Discrimination. This legislation like the earlier bill would have reduced the number of Commissioners from four to three and would make each of the positions full-time. The proposed salaries under these bills were \$23,000 for the Chairman and \$21,000 for the associate members.

Once again, the bill failed to produce the necessary support in either chamber and failed to pass.

The Commission now had three full years of experience with the legislature and with both supporters and non-supporters of its proposal. With this experience and history behind it, the Commission made an additional effort in the 1975 and 1976 session.

Elected in November of 1975, Governor Michael S. Dukakis early in his administration supported the concept of a full-time commission bill. A new bill was drafted and filed for the next session. While there was substantial support from the Executive Office and from the Executive Office of Administration & Finance, the bill was unable to muster the

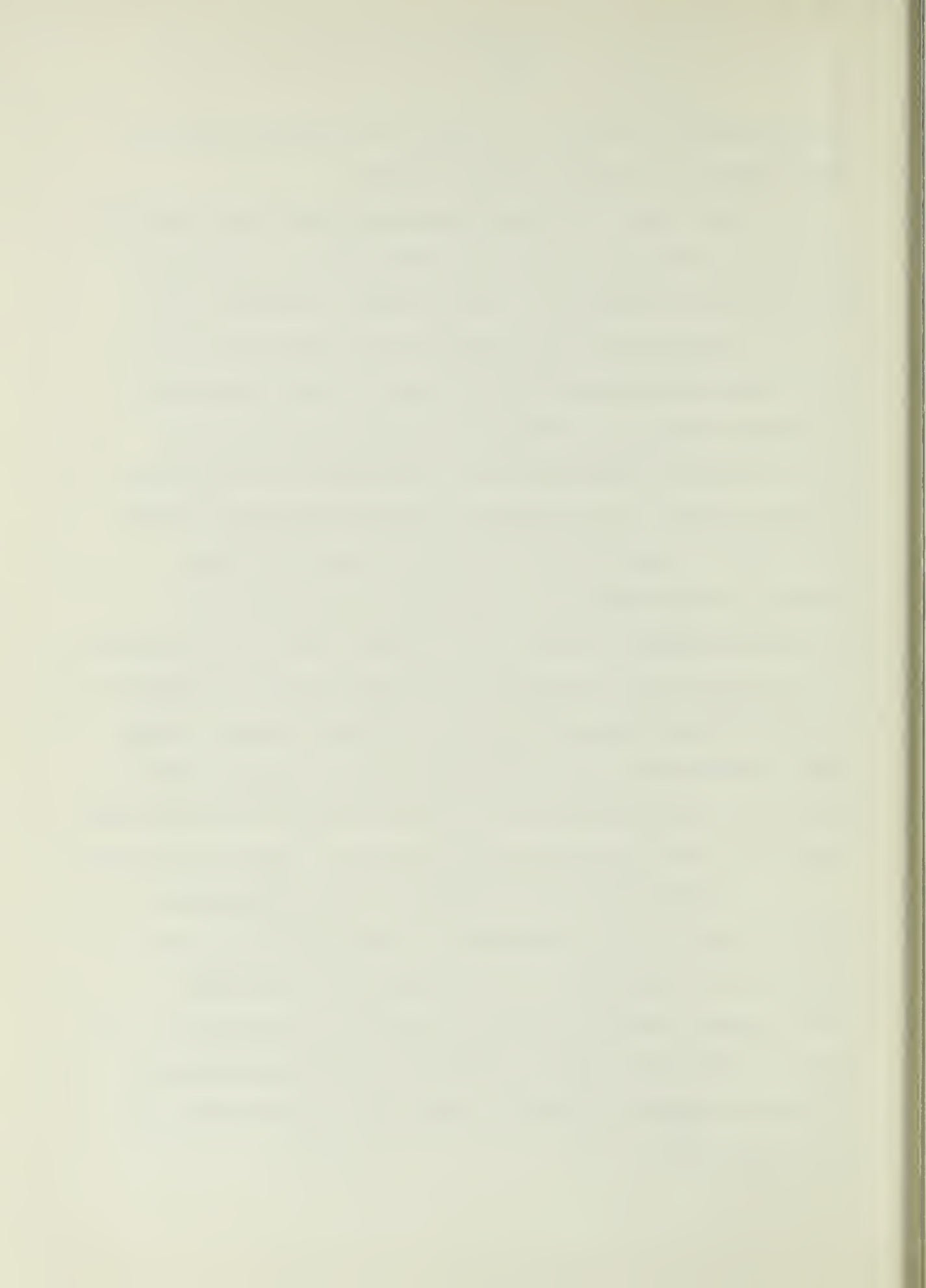


necessary support before the close of the session and this first attempt by Governor Dukakis failed.

The bill was refiled immediately and the Governor's legislative office, together with MCAD staff, coordinated their effort for passage of the full-time commission bill.

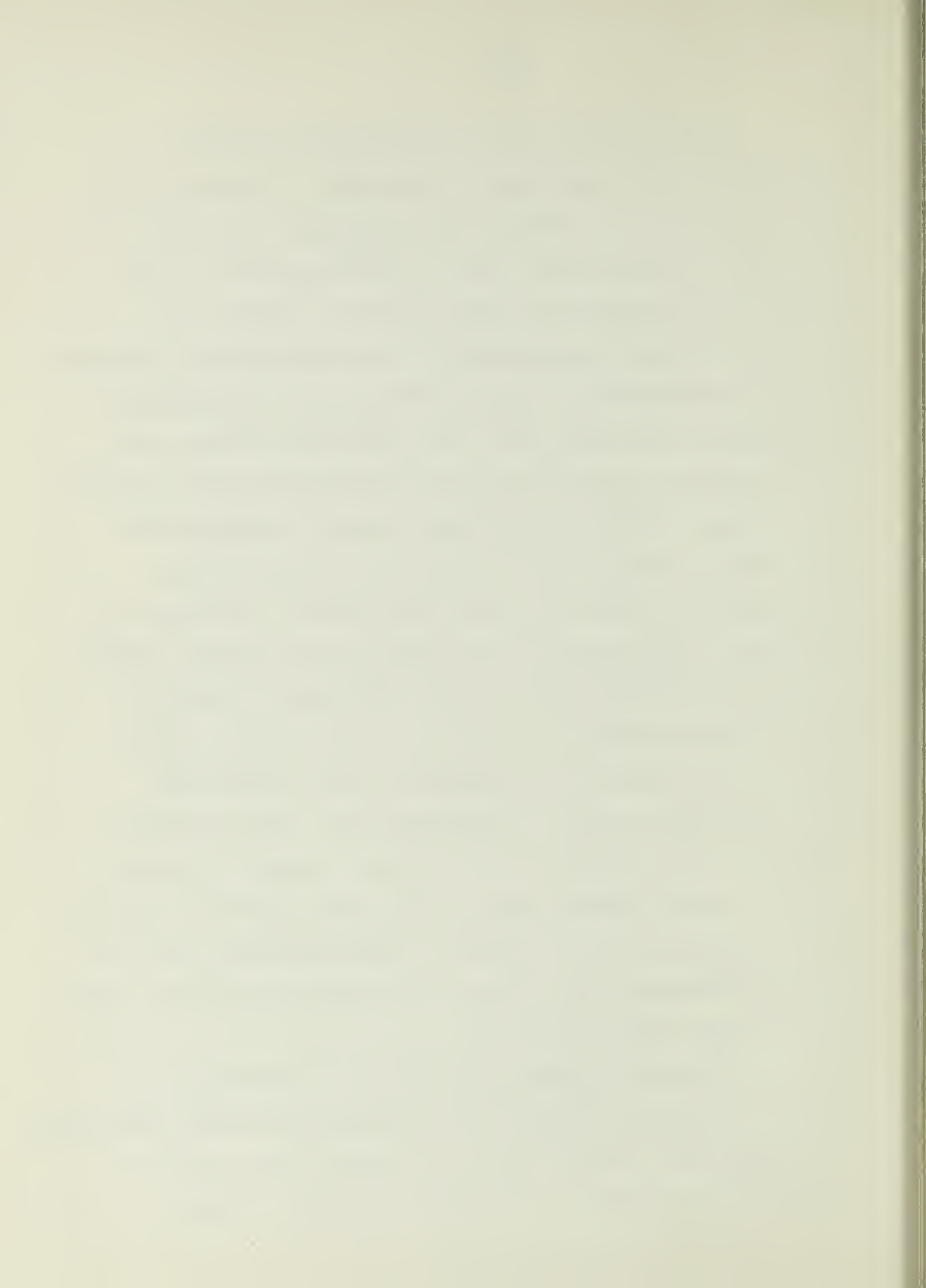
Arguing that this legislation would make a major state agency more accountable in terms of time, resources, and effectiveness, the Commission lobbied hard and long among its regular supporters and from areas not usually in the camp of MCAD. The Commission and the Governor's staff argued that a more effective MCAD could provide better services to Complainant and Respondent alike; that the efficient movement of cases and a higher level of due process would provide better remedies for those entitled to them and more expeditious disposition for the general public. While these arguments did not necessarily produce support from all levels for this legislation, it had the effect of neutralizing some of the past opposition making passage a clear possibility.

On the 15th day of October, 1976, the Great and General Court of the Commonwealth of Massachusetts passed Chapter 463 of the Acts of 1976 establishing full-time Commissioners for the Commission Against Discrimination. The Governor signed the bill on October 22, 1976, and attached thereto an emergency preamble making the bill effective on October 26, 1976.



In this background, Alex Rodriguez of Boston, Massachusetts, Sam Stonefield of Northampton, Massachusetts, and Jane C. Edmonds of Sharon, Massachusetts, were sworn in on the 7th day of March, 1977, as Commissioners and the Chairman respectively by Governor Michael S. Dukakis, as the first full-time appointments to the Massachusetts Commission Against Discrimination. Chairman Edmonds and Commissioners Rodriguez and Stonefield took their respective offices with full knowledge of the basic problems surrounding this important state agency. There was sufficient reason to believe that the passage of Chapter 463 of the Acts of 1976, and its implementation through full-time appointments, would help to alleviate, if not obviate, the problems nagging MCAD. Indeed, the legislature mandated by specific language in this bill that the Commissioners ".... prepare comprehensive reports detailing the effect of the passage of this Act upon the case disposition process of the Commission, with particular emphasis on the reduction of the present backlog of pending cases." The Act further requires that this report be submitted to the Governor and to the Clerks of the Senate and the House of Representatives every 30 days for a period of one year after the effective date of this Act.

While the mandate and emphasis is clearly on the "backlog" problem so-called, it is also clear that the legislature was interested in knowing what other effects the passage of Chapter 463 would have on the entire operation of MCAD.



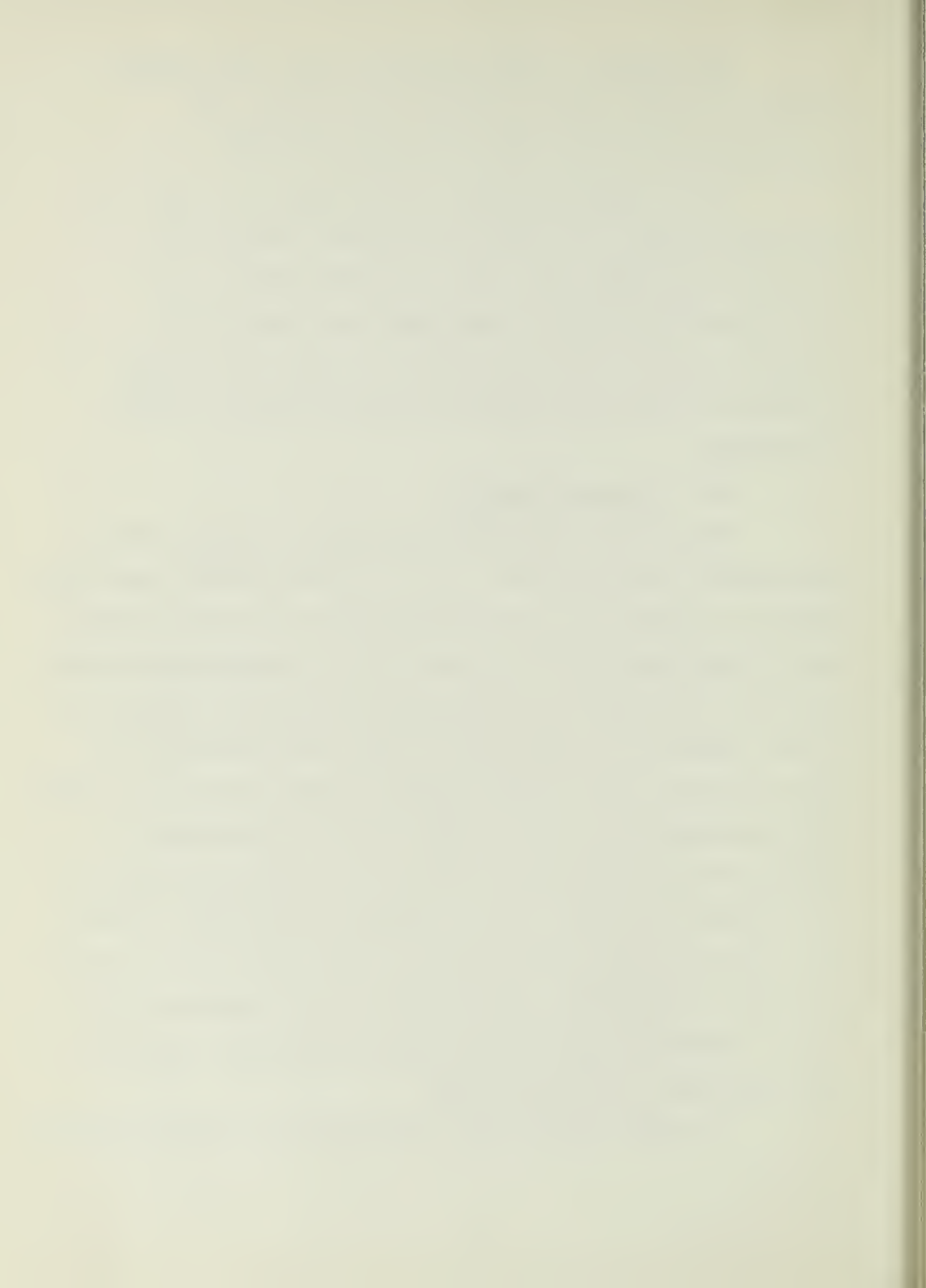
The balance of this report will deal with specific problems and issues and the effect of the passage and implementation of Chapter 463 of the Acts of 1977.

It is important to note before turning to the substantive portions that this first 90 day report must represent a base line from which we, commissioners, can accurately measure, report, and detail the effect of the passage of Chapter 463 of the Acts of 1976 upon the agency generally and upon case disposition and the backlog problem specifically.

II. MCAD-CASE BACKLOG

MCAD is the state anti-discrimination agency for the Commonwealth of Massachusetts. It is a quasi-judicial Commission mandated to enforce the anti-discrimination laws of the Commonwealth of Massachusetts and to act as the so-called EEP deferral agency for the federal Equal Employment Opportunity Commission. In this capacity, the Commission receives approximately 2,000 cases per year, each requiring various degrees of case processing. This processing may require a simple lack of jurisdiction determination or a highly sophisticated investigation resulting in a finding of probable cause, statutory conciliation efforts, and a full adversary public hearing in the event the case cannot be settled. Thereafter, final orders of this Commission may require appellate review or enforcement through the courts of the Commonwealth of Massachusetts.

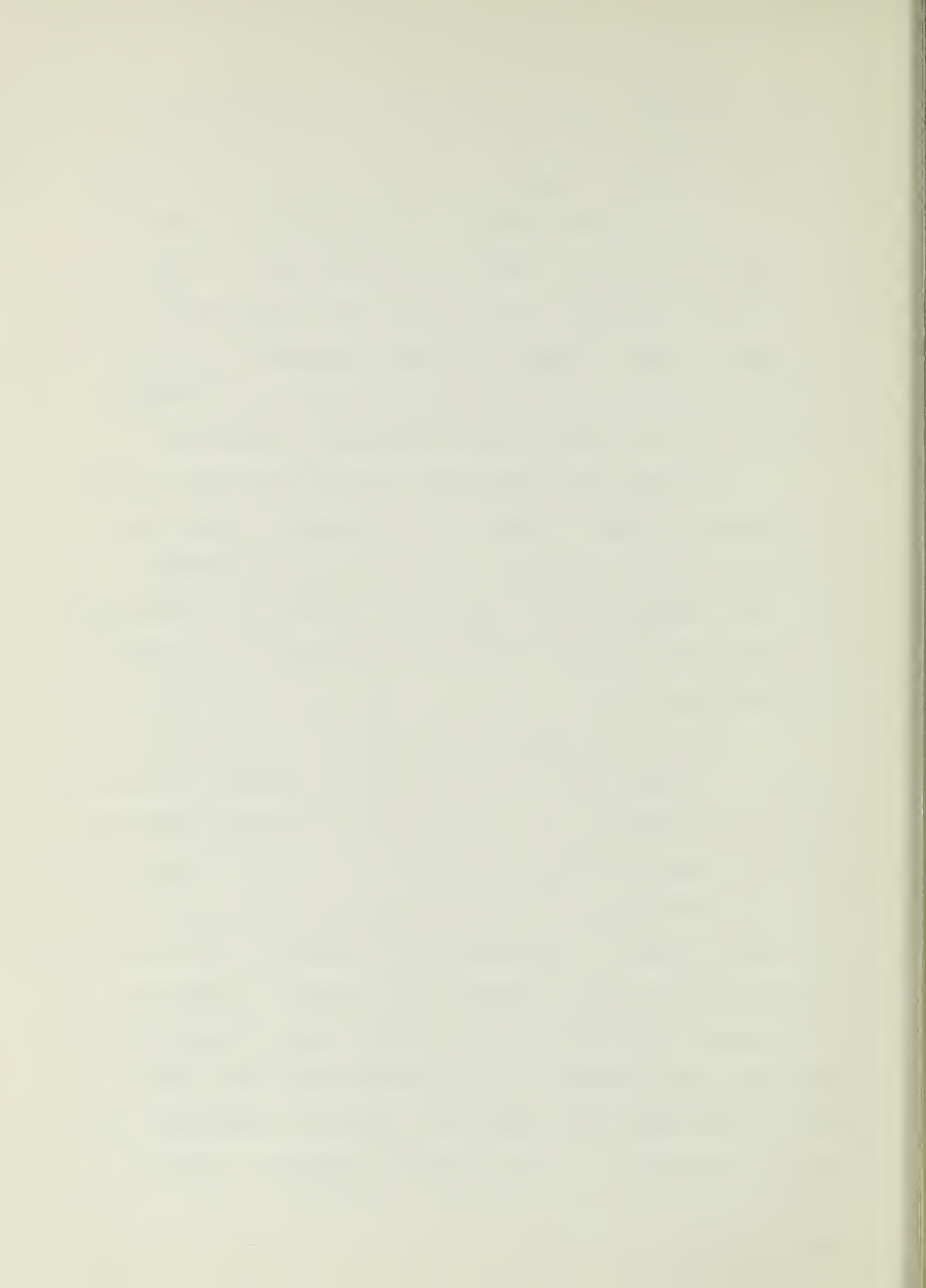
In brief summary, this represents the statutory mandate



of this Commission. Through the years, for multiple reasons, some identifiable, others more nebulous, cases have become backlogged in various numbers and degrees of case processing creating one of the most serious and chronic difficulties this Commission has had. Over the years multiple attempts have been made to reduce or end in toto the case backlog. While many of these attempts have been successful, at least in part, they have in turn generated other types of backlog or delays in other areas of this Commission's operations.

It appears that part-time commissioners were simply not equipped in terms of time or in resources to devote the necessary energies to develop a plan for case processing, which when implemented could deal with current case processing, the backlog and all other production problems of this agency simultaneously.

There is no need at this juncture to attempt to analyze the reasons for the backlog problem except to note that this chronic problem is the direct result of three conditions which have been part of this agency for at least the past 5 years. They are in short an ever-increasing jurisdiction as the legislature sought to extend further protection to its constituency and their civil rights; a budget which failed to keep pace with the increased jurisdiction, and in some years one which has been deeply cut, and finally, a more sophisticated public which in those 5 years more than doubled the number of complaints filed with the Commission. These problems represent a formidable challenge and one which part-time management has been unable to handle to date.

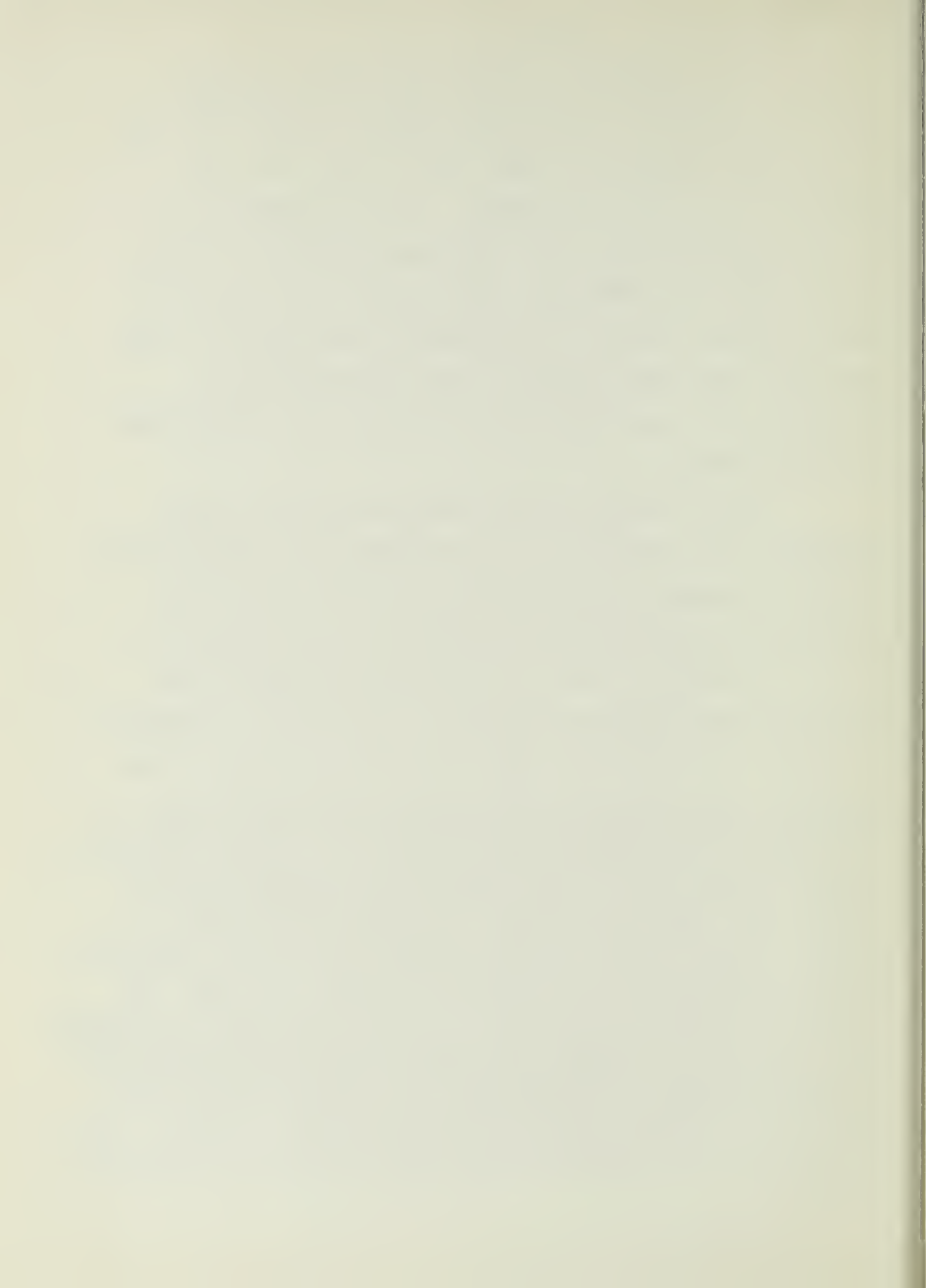


It is interesting to note that there is no hard and fast definition of what backlog means. It has, from time to time, been defined in as many ways as there have been attempts to deal with the problem. With the benefit of a recently developed Management Information System,^{2/} by mid-July of 1977, this Commission will for the first time in this agency's history be able to identify the exact number of open cases, the names and addresses of each Complainant and Respondent, the case number for each file and its filing date and exact status.

Until the Management Information System is fully implemented and operational, we must depend upon present manual systems to identify and approximate our present open cases awaiting processing and/or determination by this Commission.

We note that one of the reports generated by the Community Dispute Services Division of the American Arbitration Association has documented quite well the long delays in case processing under present methods and suggests that the new

^{2/}The Management Information System referred to herein represents one of the products received by this agency as a result of a contract entered into between MCAD and the Community Dispute Services section of the American Arbitration Association. This contract with American Arbitration Association was paid for through a special grant secured by MCAD from the Equal Employment Opportunity Commission on September 28, 1976, which funds were then subcontracted to the provider on November 17, 1976. The program is designed to establish an in-house capability to increase cost effectiveness of this agency in case processing; specialized staff training for existing MCAD investigators and attorneys; and the development and implementation of a computerized management information system. A copy of the grant contract and the subcontract are attached hereto and marked Exhibits A1 and A2. All other relevant data concerning this contract and its implementation is available at the offices of the Commission for any interested person.



procedures should be able to provide the Commission with the capability of making determinations in cases in or within 90 days of filing.

Accordingly, for purposes of this report, this Commission will regard all cases filed prior to January 1, 1977 as its backlog. Since we cannot anticipate full implementation of new case processing procedures until mid-July of 1977, we cannot use a "91-day" standard to define backlog. However, we do anticipate considering it as a standard in the very near future.

Through our manual system^{3/} we have determined that this agency has an open case inventory as of May 31, 1977 of 3,511 cases. This figure includes cases filed up to and including that date. For the last three month period, this Commission has processed and closed some 645 cases. This represents an increase of 283 cases closed for the same period during 1976. For this same 90-day period, this Commission has secured and paid out \$83,632.46 in damage awards. This figure represents an increase of \$51,869.03 for the same period last year. These summaries for the last 90 days have been culled from full reports for each of the last three months, copies of which are attached hereto and marked Exhibits C1, C2 and C3.

^{3/} The manual system cannot be regarded as totally accurate and these figures are subject to revision upon full implementation of the Management Information System which is anticipated sometime in mid-July of 1977.



This increase in production and recovery is directly related to the emphasis which we have conveyed to our staff with respect to the backlog problem, as well as our direct participation in the case processing effort. We understand from our General Counsel that this direct participation by Commissioners represents the first time in 5 years that Commissioners have been directly involved in the case processing effort. The additional benefits of this effort and production which this effort and production has had on staff cannot be measured by numbers or dollars alone.

Notwithstanding the substantial increase in processing, we cannot be satisfied until the remaining inventory has been brought to a manageable level, and until we have achieved a "90-day" standard in defining backlog itself.

B. Public Hearings and Preliminary Appeals

We noted in an earlier section of this report that earlier attempts to treat the backlog problem usually generated mini-backlogs in other operations of this agency. It is important to note at this juncture that during the relevant 90-day period, this Commission has brought 4 cases to public hearing,^{4/} each of which has been completed or disposed of during this adversary proceeding. As with our backlog, we

^{4/} The Commission is continuing to experiment with multi-track recording devices to record testimony at public hearings to obviate the need and expense of costly court stenographers. The results of these will be the subject and part of the second 90-day report.

^{5/} We have been advised by our General Counsel that preliminary appeals hearings were generally scheduled once or twice a year by former administrations. Through our rule-making and policy making procedures, preliminary appeal hearings will be held every 45 days, at least. Our present scheduling has virtually eliminated all present pending appeals, some of which date back to cases closed during 1974 and 1975.

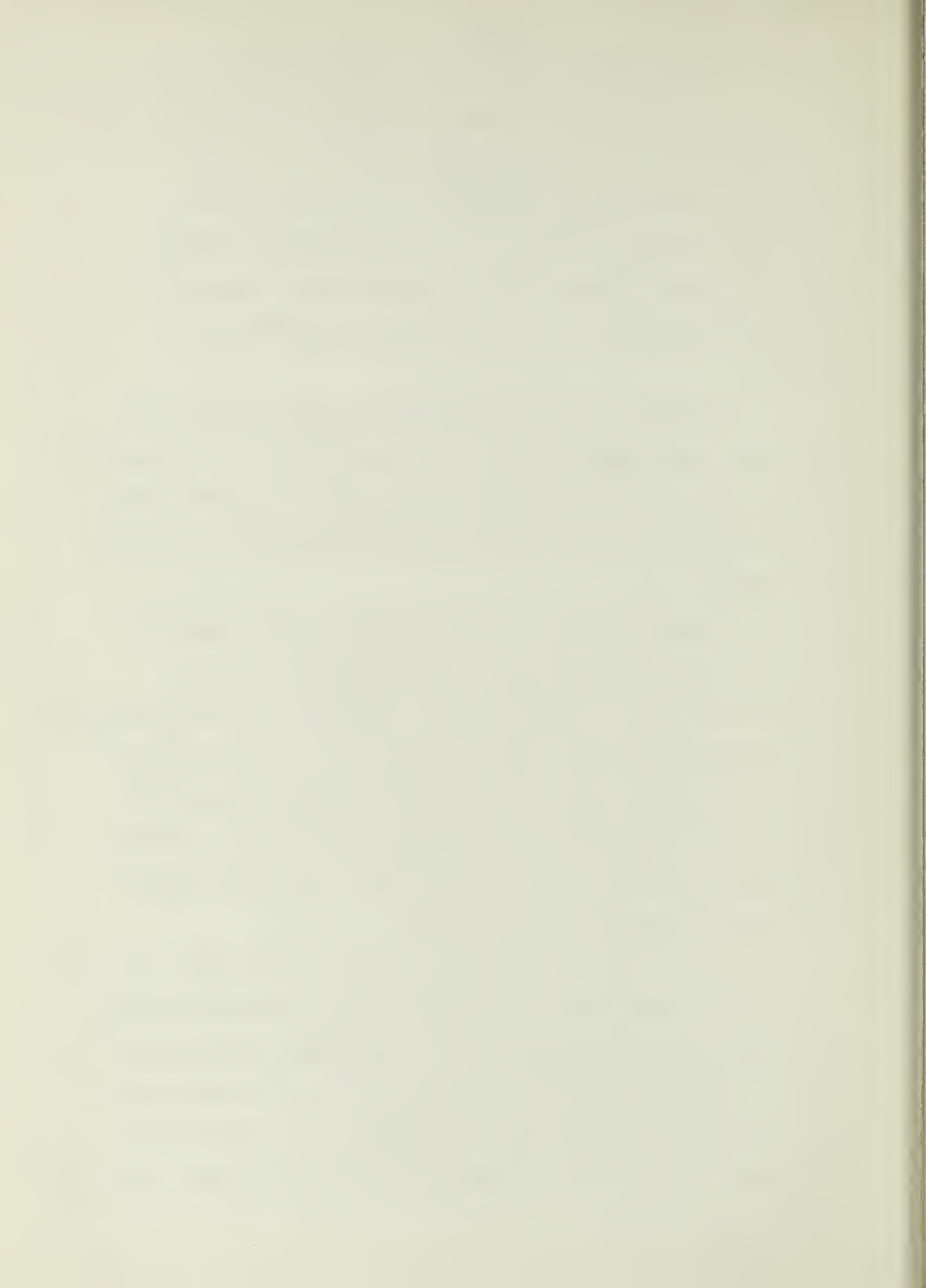


have identified through our manual system some 124 cases which are awaiting public hearing. Through our revised Rules of Procedure and rule-making authority, we have developed procedures for dismissing those cases which do not warrant public hearings, and other pre-trial hearing procedures which should help to substantially reduce and eliminate this smaller backlog of cases awaiting public hearing.

Further, during this relevant 90-day period, the Commission has scheduled some 102 preliminary appeal hearings. Some____cases were heard on the merits and decisions issued. An additional____cases were disposed of through the default procedures. (5)

While the task of disposing of a large number of dated and aged open cases may appear onerous, if not impossible, with the limited staff resources currently available, we strongly believe that MCAD, through the implementation of new procedures and innovative techniques cannot only keep current with cases filed at the Commission but can continue to reduce the inventory of backlog cases that have plagued this agency over the past few years.

We discussed earlier the special EEOC grant which has provided the funds for a training program; analysis of MCAD procedures and the development of a Management Information System. What follows is a summary of these procedures and innovations which when fully implemented will allow for an increased rate of case processing and result in the elimination of the MCAD backlog.



C. Training and New Procedures

MCAD has begun an extensive project utilizing the services of the Community Dispute Service Division of the American Arbitration Association calling for the implementation of new procedures; the development of a computerized management information system; and the training of all staff in investigative skills. Currently, the average MCAD case takes more than 18 months to process. Upon the completion of the EEOC funded project,^{6/} it is estimated that the average case will be processed in or within 90 days.

The new procedures will become operational in approximately three months. They will include revised methods for taking discrimination complaints and will allow staff to quickly dispose of cases that are frivolous or without obvious merit. Also to be implemented is the utilization of pre-determination settlement conferences which will permit resolution of cases prior to lengthy investigation. Further streamlined investigative procedures are being developed and will be standardized to eliminate the current ad hoc approach to field investigations.

In order to assure the success of the expedited case processing procedures, an intensive training program has been scheduled for MCAD staff. On June 20, 1977, a two week initial training program will commence for investigators and attorneys in the utilization of new procedures and in basic negotiations,

^{6/} We expect final production under the EEOC grant funded contract to be delivered on or before the 1st day of June, 1978.



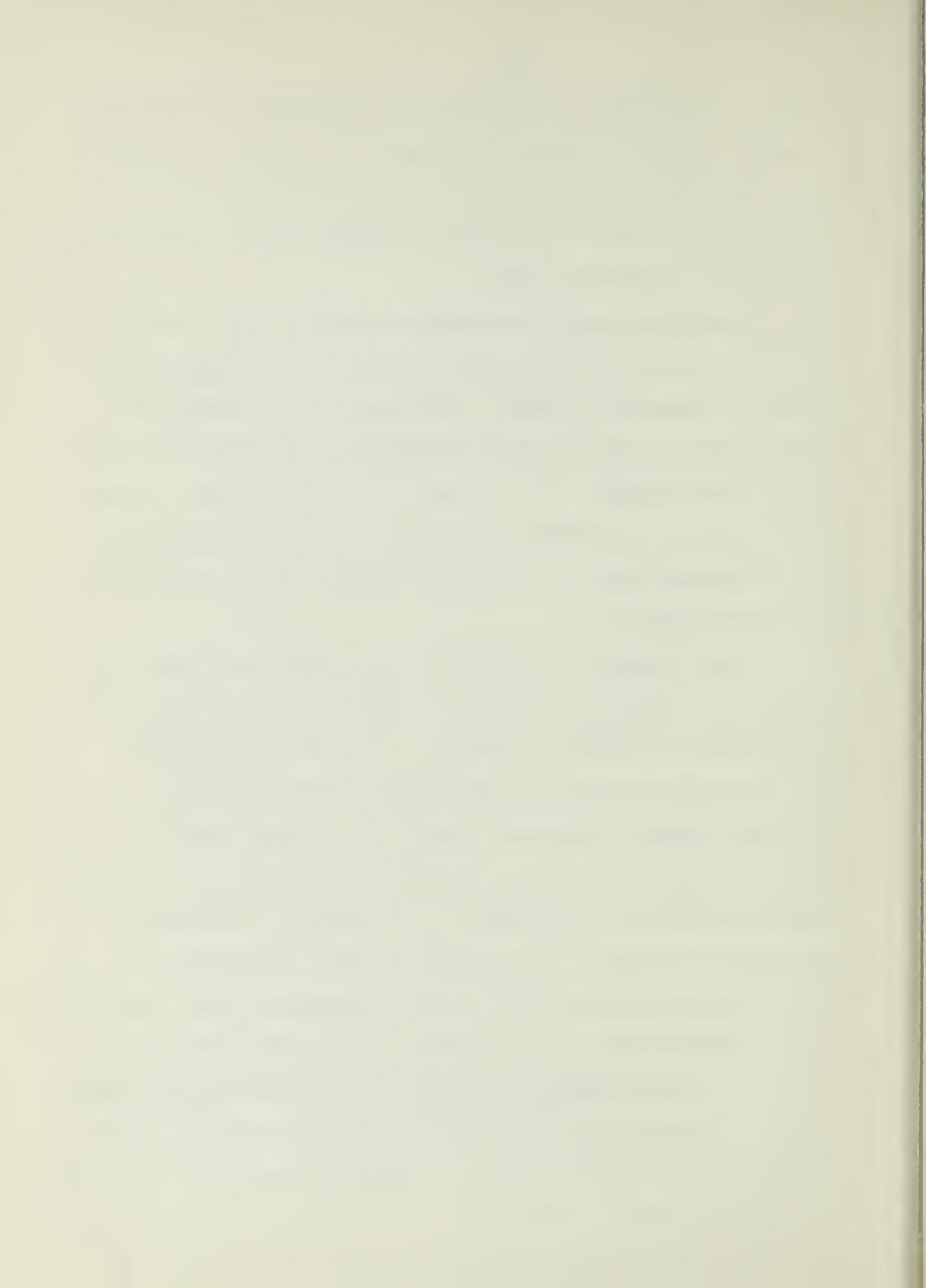
mediation, conciliation, fact-finding, investigative techniques and skills. While the training sessions will cause a temporary reduction in the rate of case closures, staff efficiency will significantly increase and ultimately improve the case processing capabilities of the Commission.

A major accomplishment in the past 90 days affecting case processing has been the establishment of a computerized management information system. Beginning in early June, the Commission will receive a weekly printout indicating the status of cases filed at MCAD. The system will free staff of tedious record keeping and statistic gathering, and more importantly, assist the Commission in identifying problem areas in the case disposition process.

Many organizational changes are being instituted to complement the procedural changes at MCAD. More noteworthy is the formation of a Control Division. Comprised of existing staff, the Control Division will maintain the management information system, coordinate scheduling of LOPC appeals hearings and public hearings, monitor case processing, including the identification of bottlenecks, and respond to inquiries on the status of cases. In performing these functions the Control Division will free the time of supervisory and investigative staff and permit them to concentrate on the closing of cases.

D. Legal Interns and Volunteers - Special Task Force

In addition to the efforts being made under the EEOC project, a special unit is being created to dispose of older cases in the case inventory. The unit will begin operating on June 6, 1977, for a period of three months, and will be comprised of



of students has been very beneficial to this agency and there is every reason to believe that their services this summer will result in a significant reduction of the case inventory.

III. CHAPTER 463 OF THE ACTS OF 1976-OTHER EFFECTS

We believe that the benefits to be derived from full-time commissioners cannot always be measured quantitatively. We believe the presence of commissioners on a regular full-time basis has produced an accountability which has lent stability to the agency and has helped create a more positive attitude among employees.

Continuing with the mandate of Section 5 of Chapter 463 of the Acts of 1976, we will now deal with certain other effects produced by the passage of this legislation.

This Commission, as presently constituted, cannot and will not take credit for all institutional and organizational changes which result in success to this agency. There are several such projects which were conceived during earlier administrations and continued during our immediate predecessor's term of office. At several points in this report we referred to this agency's contract with the Community Dispute Services Division of the American Arbitration Association for an evaluation of 1976 case processing and an analysis of the management structure of the Commission Against Discrimination. The seeds for this innovative design were first conceived by former Chairman Glendora M. Putnam. Her initial efforts, together with a firm commitment from Secretary of Administration and Finance, John R. Buckley, helped to bring this proposal to its present state. We are extremely pleased to be a part



helped to accelerate certain results and goals. The Commissioners, in unison, have demonstrated their confidence in its potential and in its effectiveness. Full and immediate implementation of its goals will in turn develop full accountability and efficiency by every person in this agency.

B. Federal Grant Programs

This agency has been the recipient for several years of a regular grant from the Equal Employment Opportunity Commission. In addition, this agency was the recipient of a special grant from the Department of Housing and Urban Development in the amount of \$120,000, which funds became available during the relevant 90-day period. While both of these grants had been negotiated prior to our appointment, an individual commissioner has now been assigned the responsibility to monitor each of the grant programs thereby relieving our General Counsel from this administrative responsibility and burden. It is our hope that the additional weight of the office of the commissioner and his direct involvement in the grant program will help this agency in increasing funding from these sources.

C. A-95 Review System

A major aspect of this Commission's increased jurisdiction is its so-called A-95 Review system. The A-95 Review process is mandated by the United States Congress and the President's memorandum dated November 8, 1962, which states that there shall be a centralized review of all federal grant applications at the state and regional level, particularly



impact. This review function has been passed on to this agency. Notwithstanding a lack of financial and physical resources, our predecessors initiated a limited program wherein MCAD would conduct a civil rights review of federal grant applications and provide advisory comments to the state clearinghouse in the Office of State Planning. In order to meet this commitment, the agency had to divert normal staff resources normally engaged in the Commission's regular case processing function.

Our predecessors recognized the great potential to establish equality of opportunity in the delivery of services and in employment at both the state and municipal level in the Commonwealth of Massachusetts, without resort to the complaint process via the use of the A-95 Review system. However, the agency suffered via the diversion of resources to this effort.

After having had the opportunity to review this Commission's A-95 system, we recognized immediately that present staff was over-extended in its function and could not properly perform the reviews necessary and develop the potential that the process would otherwise provide. Accordingly, we requested our General Counsel to review the HUD Grant negotiated by our predecessors and determine whether or not we could renegotiate the scope of work to narrow the project and restrict the scope substantially to an expansion of our A-95 capability. If this could be done



then the redirection of those funds in their entirety to the development of a full state civil rights review capability would help to insure equality of opportunity for minorities and women in all state and federally-assisted projects in the Commonwealth.

Within the relevant 90-day period these negotiations were completed and the scope of work modified to emphasize the A-95 expansion effort and to delete other projects of a less important nature.

This policy change has had both an immediate and positive effect. With these increased resources, we have been able to prepare more substantive comments on the pending applications, increase the number of reviews and develop a sound and responsible relationship with other state and federal offices involved in this process. We are particularly gratified to see the public response to this activity. A copy of a recent Boston Globe editorial is attached hereto and marked Exhibit D.

The acceleration and improvement of this agency's A-95 review capability will help to insure equal opportunity for minorities and women and assure the continued flow of federal dollars into the cities and towns in the Commonwealth of Massachusetts.

IV. CONCLUSION

We will not use this section of the report to summarize all of the points which we have attempted to articulate in the previous sections. However, we do feel that it is important to reiterate that this first 90-day report represents



the base line from which the next three reports will issue. In these reports, we believe that we can reflect a more accurate measure of both our performance and the effect of Chapter 463.

We have attempted in this report to put Chapter 463 in its proper legislative and historical perspective; identify the major problems facing this agency and the Commissioners when we took office; and the immediate steps which we have taken to address the problems and the issues facing us. Some of our efforts have produced immediate and tangible results. Others will take more time.

Respectfully submitted,

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EXHIBITS

Exhibit A1 - EEOC Grant Contract No. EEO 76099 for the amount of \$71,559.48

Exhibit A2 - Agreement between MCAD and Community Dispute Services of the American Arbitration Association dated 17 November 1976.

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Exhibit C1 - March 1977

Exhibit C2 - April 1977

Exhibit C3 - May 1977

Exhibit D - Boston Globe Editorial



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COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS COMMISSION AGAINST
DISCRIMINATION

Second Ninety-Day Report To The
Governor And Clerks Of The
Senate And House Pursuant To
Chapter 463, Of The Acts Of 1976

Respectfully submitted,

JANE C. EDMONDS, Chairman

ALEX RODRIGUEZ, Commissioner

SAMUEL STONEFIELD, Commissioner

State Library of Massachusetts
State House, Boston

December 7, 1977

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This second Ninety Day Report is respectfully submitted by the three Commissioners of the Massachusetts Commission Against Discrimination pursuant to the mandate of Chapter 463 of the Acts of 1976.

I. INTRODUCTION

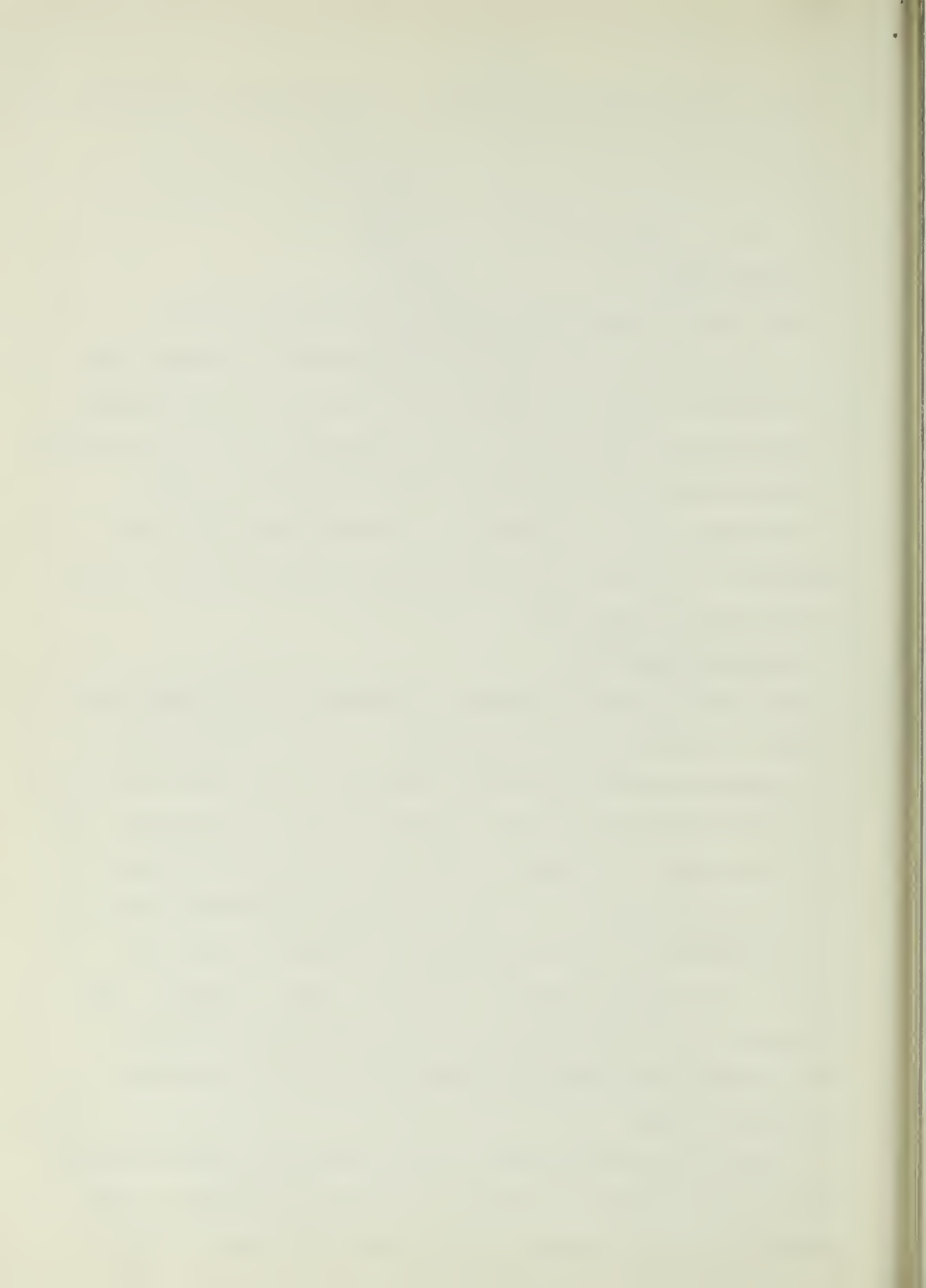
This report represents the second submission of the Massachusetts Commission Against Discrimination detailing the effect of the passage of Chapter 463 of the Acts of 1976 upon the case disposition process of the Commission, and in particular, on the reduction of the present backlog of pending cases.

For purposes of continuity, we respectfully call your attention to the first Ninety Day Report submitted on or about the 20th day of June, 1977.

II. MANAGEMENT REFORMS

The first Ninety Day Report submitted by this Commission outlined in some detail the management reforms implemented by the recently appointed full-time Commission and their objectives. Many of the systems and plans detailed in that first report are now in operation. Because we have experienced some delays in implementing all aspects of this management information system, the subcontract has been extended by agreement of all the parties, up to and including January 28, 1978. However, the Commission's case inventory, and training process, and the establishment of standardized personnel policies have been completed in full.

During the first 90 days of our tenure, we have completed the plans and system to convert the various docketing, record-keeping and report systems dealing with the status of cases



under investigation from a manual to an automated system. Preliminary to this effort, an intensive two-day inventory of all cases in the agency was necessary to determine the exact status and location of each file and to determine the number of files lost in prior years. The data was then transcribed for coding and keypunching.

Lost files constitute a significant percentage of so-called backlog. Admittedly, identification of "lost" cases presents a serious problem. We have elected to address the issue of "lost" cases in order to determine how to deal effectively with this segment of backlog virtually ignored to date.

The present management information system enables the agency to track the progress of each case through a number of processes including investigation, conciliation, appeal and public hearings.

Since June, we have been generating a full series of reports on a bi-monthly basis. These reports include an alphabetic listing by complainant and by respondent which describes the most recent action on the case, the date of that action and the person (investigator, staff attorney or Commissioner) completing that action. Additionally, a case status report lists the same information (event, date, person) for each action taken on the case since it was filed; this report lists the cases chronologically and in docket number order. All three reports provide significant benefits as a management tool with the production of several bottleneck reports both in detail and in summary. The bottleneck summary tells how

many cases are currently in each event status. The bottleneck detail lists the docket number and complainant's name for all cases by status in order of elapsed days since the last action (event). In this way, the Commission is able to focus on the cases that have been delayed in any one event for whatever period of time it deems excessive and notify departmental managers or individual staff personnel of the Commission's concern for improvement.

The reports are used, also, to answer status inquiries from the parties, EEOC, and other departments of the Commonwealth on a timely basis. The response time for a standard inquiry equals less than 30 seconds, sharply reduced from the past high of several hours or even days.

Current efforts are being spent on "cleaning up the files," i.e., adding information previously omitted or deleting extraneous data entered when the master file was created. It should be noted that the computerized files are only as accurate as the manual card file from which they were created. In a real sense, we are correcting all of the record inaccuracies that have been accumulated in the last ten years. Needless to say, this is a project which will continue throughout the third quarter.

III. THE BACKLOG EFFORT

One of the most difficult problems in dealing with backlog is to avoid creating sub or mini backlogs in other areas of the Commission's operation. Equally important has been the difficulty in maintaining high level case processing efficiency together with the normal standards of due process to the

parties involved in a charge process. Increases in the quantity of backlog cases resolved alone will not impress the new Commission unless every reasonable effort has been made to guarantee the rights of complainants and respondents alike. Thus every administrative closeout, without a determination on the merits, is without prejudice to the complainant. Multiple levels of notice have been established before a case is closed and every administrative closure is susceptible to a re-opening by a complaining party for good cause shown. Further, it has been established by this Commission that the standards for "good cause" be liberally applied.

The obvious objective of any backlog approach is to dispose of and to close as many cases as possible within the established period of time. For purposes of this effort, we set a 6 to 8 week period for phase one that began on or about the 22nd day of July, 1977. It continued for an 8 week period.

Our initial effort or first stage backlog produced certain results. We have identified all open cases requiring further processing for closure. We have identified a significant number of "lost" cases on files which in turn will require a strategy. Finally, we have during this period channelled approximately 425 backlog case folders to staff for case processing. The results follow:

1. total number of cases in backlog effort----425
2. total number of cases closed-----261

Phase two of the backlog effort was started on or about October 7, 1977 contemporaneous with the implementation of



the new case processing techniques.^{1/} As part of the new processes, field representatives will be required to turn in their older case load and will be assigned current cases. The returned case folders, together with our other non-current cases, will be treated as backlog and assigned to a fully staffed backlog unit. This unit will consist of two senior MCAD investigators, CETA employees, and approximately ten law student interns. This unit will follow procedures similar to those used in phase one. The results of this process will be reviewed in our next report.

We have clearly accepted both the challenge and the mandate of Chapter 463 of the Acts of 1976, and have demonstrated our commitment and intent to end this Commission's backlog problem. To date, we have employed every reasonable effort to maintain this commitment, and to continue to search for new ways and methods to increase productivity on backlog case processing while staying current on new charges.

While inroads have been made into the backlog problem, elimination of the problem is clearly dependent upon more staff and additional resources. In our first report to you, we noted that while we recognized the need for economy and fiscal sense, some additional funding and additional investigator's positions were critical to ultimate success to our goal and your mandate. This continues to be true, and accordingly, we have projected those positions in our fiscal 1979 Budget.

^{1/}Section IV of this report will deal briefly with the new case processing techniques. The processes and guidelines therefore were developed under the special EEOC grant more fully described in our first report.



IV. NINETY DAY STATISTICS FOR THE MONTHS OF JUNE, JULY AND AUGUST 1977

The following represents the comparative statistics for the second ninety day period as compared with the same period during 1976.

COMPARATIVE SUMMARY

JUNE - AUGUST 1976
JUNE - AUGUST 1977

A. NEW COMPLAINTS RECEIVED

	<u>1976</u>		<u>1977</u>
JUNE	163	JUNE	192
JULY	168	JULY	167
AUGUST	176	AUGUST	186
	<u>507</u>		<u>545</u>

B. COMPLAINTS CLOSED

	<u>1976</u>		<u>1977</u>
JUNE	147	JUNE	139*
JULY	223	JULY	237
AUGUST	159	AUGUST	266
	<u>529</u>		<u>642</u>

*Two week training session

During this period, case inventory has been reduced by 97 cases.

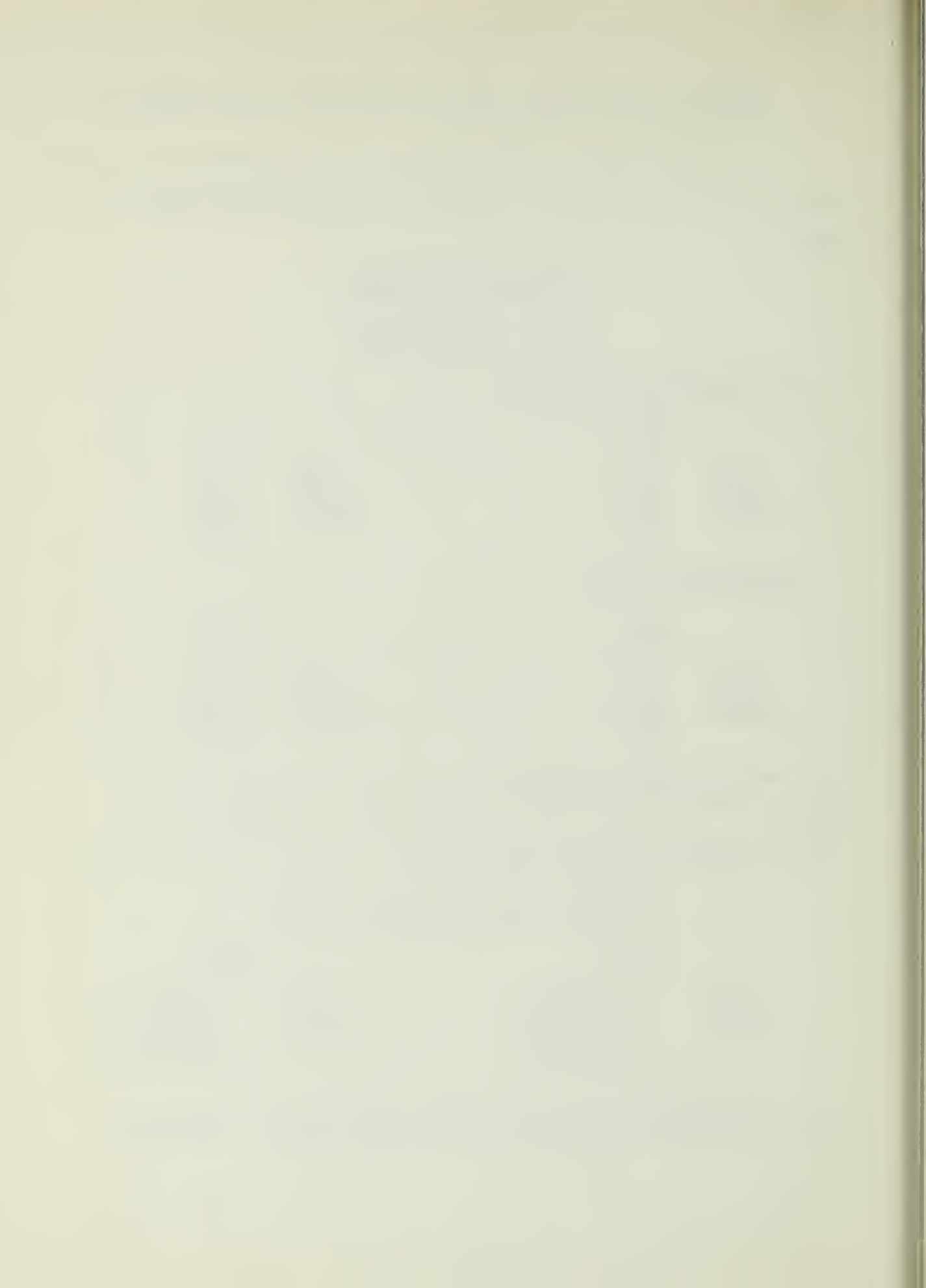
Total reduction of inventory during tenure of full-time Commissioners to date - 311.

MONETARY AWARDS TO COMPLAINANTS

	<u>1976</u>		<u>1977</u>
JUNE	\$ 4,861.40	JUNE	\$ 26,689.40
JULY	15,160.50	JULY	13,093.55
AUGUST	10,687.00	AUGUST	9,227.12
	<u>\$ 30,708.90</u>		<u>\$ 49,010.07</u>

During this period monetary awards increased by \$18,301.10

Total increase of monetary awards during tenure - 170,170.20

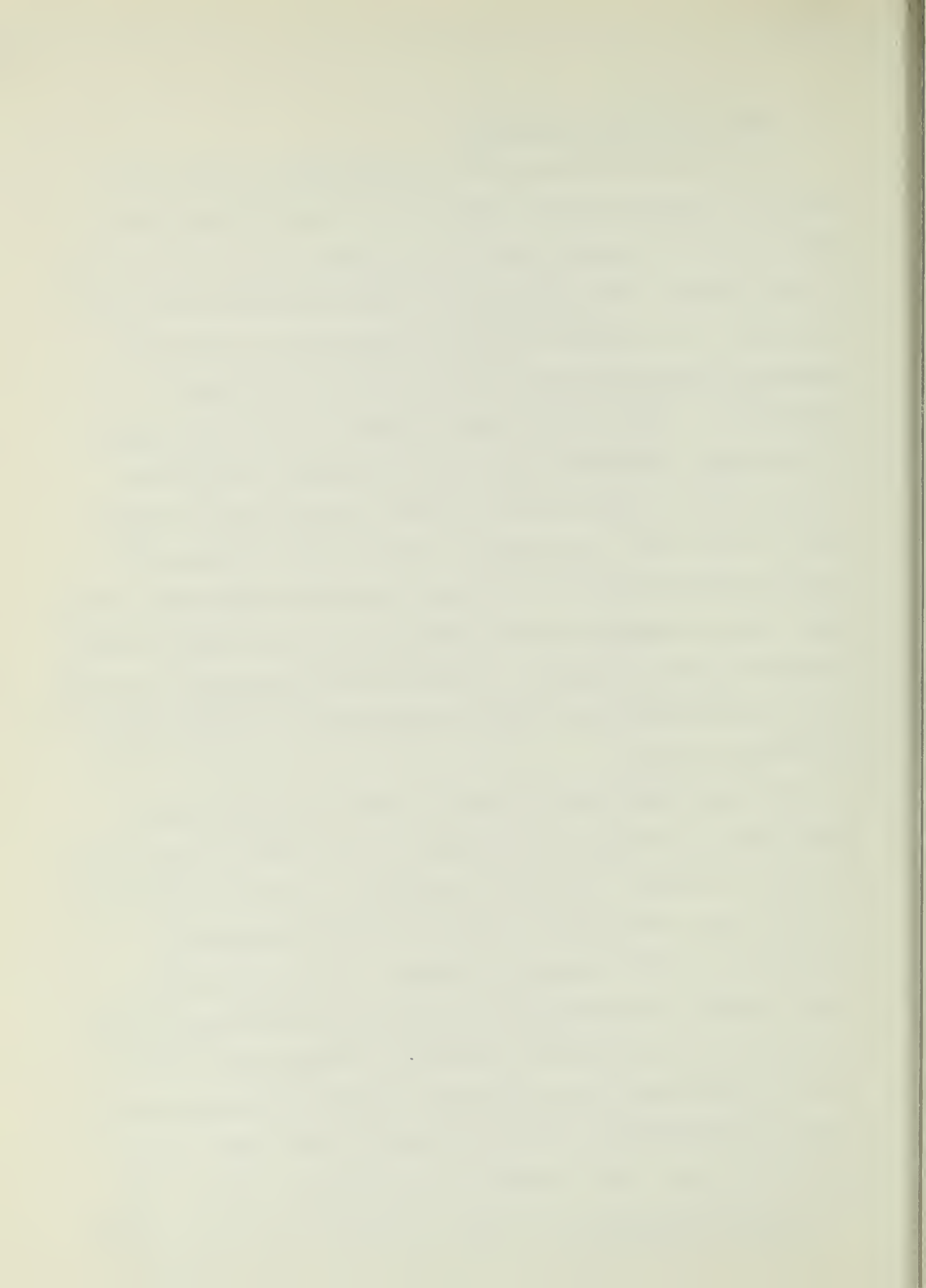


V. CASE PROCESSING GUIDELINES

In the first 90 day report, we discussed in some detail the special grant from the EEOC which we received and part of which we used to develop new case processing guidelines for use by this agency. The development of these techniques have been the result of an intense collective effort by us and by the Community Dispute Services of the American Arbitration Association. These efforts have resulted in the development of techniques for rapid charge case processing, guidelines related thereto, and in-depth training sessions for all MCAD staff in their use. On October 7, 1977, these techniques^{2/} were put into practice and are part of present MCAD case processing. These techniques will continue in use for a trial period of some two months duration. Following this period, the working draft of guidelines will again be subjected to intense review and scrutiny by us.

We fully expect that the use of these techniques will permit MCAD to dispose of a complaint in or within 90 days from the date of filing. Of equal importance, it is our expectation that this tool will help to prevent this Commission from developing a further backlog of cases. In the most simple terms, the new rapid charge case processing techniques will be used on all new filed cases, so-called current cases, while a special backlog team will devote its efforts to the so-called older or backlog cases. Thus, we look upon the rapid charge procedures as not only a method to speed up all current case

^{2/} A complete description of these guidelines and techniques are available at the offices of the Commission, upon request.



processing but a preventive tool to deal with backlog problems.

VI. COMMISSION'S OTHER RELATED ACTIVITIES

The following sections of this report will deal with other activities which this Commission maintains in addition to the case investigative processes. It is important to outline, at least in part, these additional activities in order that the case processing sections and backlog efforts be shown in perspective to the Commission's entire operation.

1. CASES CERTIFIED TO PUBLIC HEARING

As the backlog effort continues, a certain number of cases presently in the conciliation phase of case processing will be moved more rapidly to certified cases for public hearing. At least to some extent this movement represents a reduction of backlog cases. To be more specific, cases which have lingered in the conciliation stage for too long a period of time, and which by virtue of the date of filing are regarded as backlog cases, will be certified to public hearing when a determination has been made that conciliation is either unsuccessful or unrealistic. Accordingly, the list of cases certified to public hearing should be increasing substantially during the months of August, September and October, 1977. To this end, the legal staff, and the office of the General Counsel, will be responsible for developing a plan to deal efficiently and responsibly with this secondary backlog. We expect and anticipate two plans to evolve. The first will be a proposal for guidelines to deal with the conciliation process itself. These guidelines will include time frames, basic demands for different types of cases, scheduling of



cases for conciliation efforts, and methods of techniques to be used during this case processing function. These items represent only part of the topics to be covered in such guidelines. The second plan which we anticipate will evolve out of this effort will be some form of central litigation center wherein cases certified to public hearing will be filtered, reviewed and put into a posture for dismissal, settlement or ultimate public hearing. Once again, we expect certain guidelines to be developed in order to dispose of this growing mini-backlog of cases.

2. RULES OF PROCEDURE

During the backlog effort and the implementation of the Management Information System and case processing techniques developed by the Commission with the assistance of the Community Dispute Service Section of the American Arbitration Association, the Commission's Rules of Procedure have undergone constant review and modification. This review was primarily intended to bring our new Rules into conformance with the changes adopted by the Commission via the Management Information System and the case processing techniques and proposals suggested by CDS. This review has helped the agency to discover inconsistencies, problem areas and faults which were not seen during the period when the Commission promulgated the Rules of Procedure in the first instance. Therefore, we anticipate that we will be able to make substantially all of the necessary revisions in the Rules of Procedure contemporaneous with the implementation of our new case processing techniques and Management Information System.



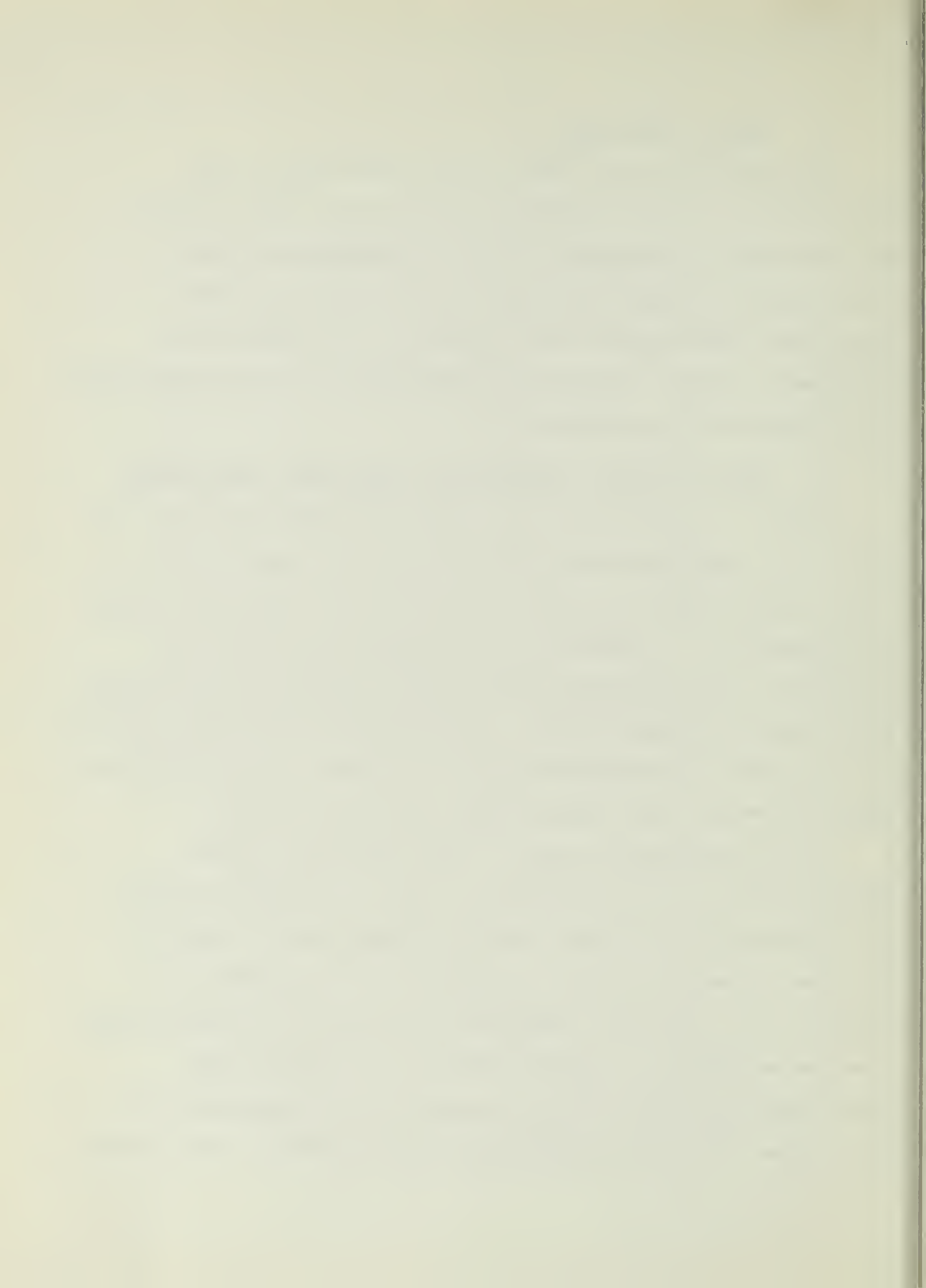
3. CREDIT GUIDELINES

This Commission has taken a most active role in the development of Credit Guidelines vis-a-vis our state statute and the recently promulgated federal guidelines on credit. Very recently, changes were made at both levels and these changes and modifications were adopted by the Commission on September 1, 1977. A copy of the Commission's Credit Regulations is attached hereto as Exhibit A.

4. FIELD OFFICES - SPRINGFIELD, WORCESTER, NEW BEDFORD

Under the provisions of the full-time Commission bill, so-called, the legislature made provisions with respect to the formal establishment of field offices for the Commission Against Discrimination. In addition, the legislature provided and delegated to the appointed Commissioners regional responsibility with respect to these offices. This delegation has been followed by the present Commissioners, and, in addition, certain additional support services have been provided for these offices.

In the Springfield office of the Commission Against Discrimination, we have developed a cadre of volunteers under the supervision of a senior field representative to assist in the case processing function carried on by this office. In addition, the full-time commissioner resident of the Springfield area has maintained a regular schedule of attendance and participation in this office to assist in its management and activities. This same commissioner has divided his time between



Springfield and the Worcester office. Certain difficulties in maintaining staff personnel in Worcester have precluded the Commission from developing the Worcester office as fully as Springfield. However, it is anticipated that with the hiring of new personnel on or about the first of October, 1977, this problem will be obviated and the Worcester office will be operating at full capacity shortly thereafter. In recent years, attrition in our legal department have resulted in spotty supervision of the New Bedford field office. During this second ninety day period, the Commission has placed on staff one additional attorney to be assigned the responsibility of supervision of the New Bedford office, together with the commissioner responsible for that operation. In addition to general supervision of the office, this staff person has been made responsible for the development of a volunteer staff to assist in the operation of the New Bedford office and the securing of some local members of the Bar to give a certain number of hours per week for the maintenance of this office. At the present time, there are two local New Bedford attorneys who have volunteered a number of hours per week pro bono to the Commission Against Discrimination for assistance in the New Bedford office. It is expected that full implementation of a volunteer program will have taken place by the end of October, 1977.

5. EEOC FEDERAL GRANT PROGRAM - 1977-1978

On November 30, 1977, the present EEOC Grant Program to this agency will come to an end. It is important to reiterate

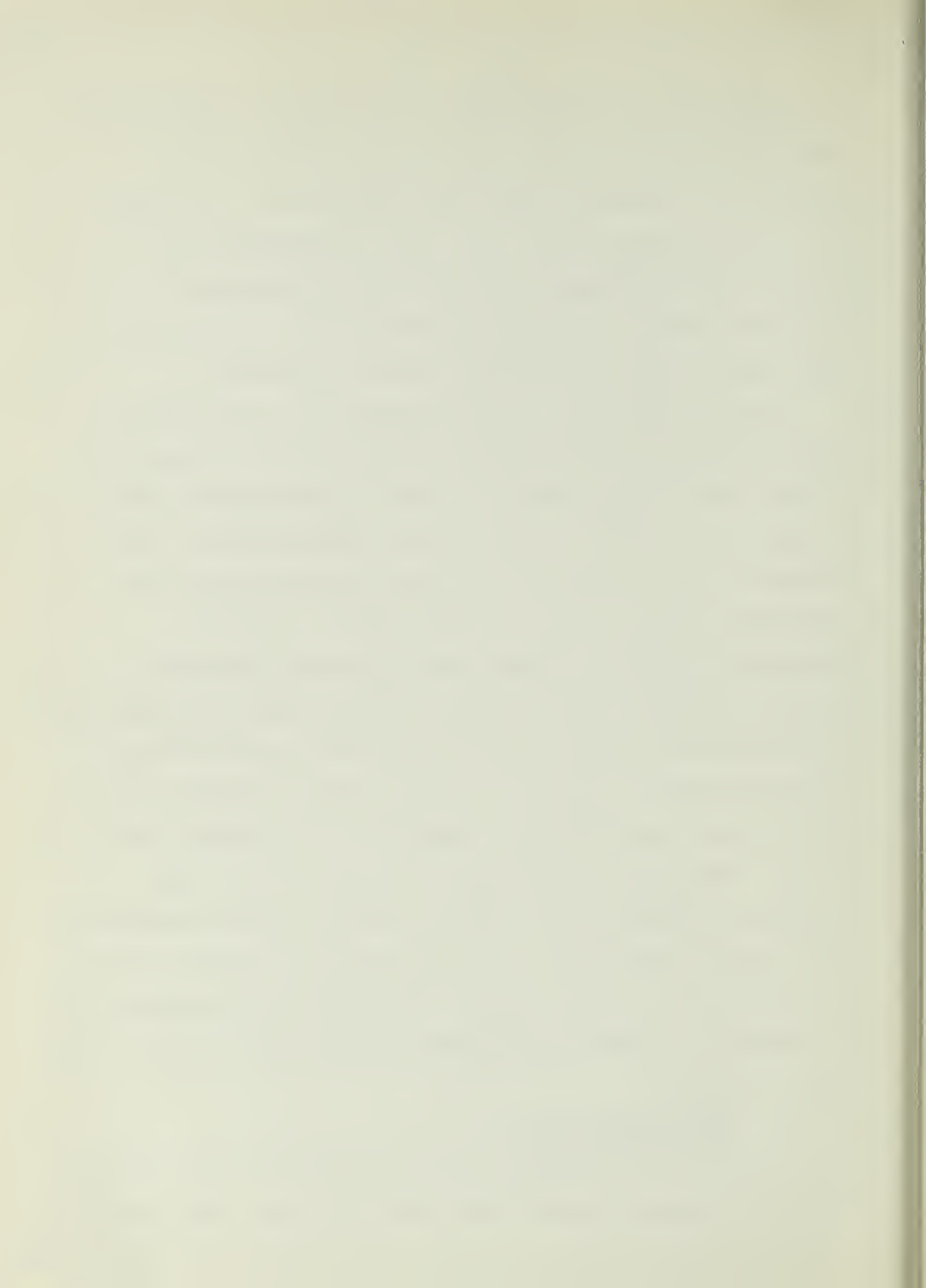


how valuable this grant has been to this agency. Beginning in 1969, with a grant of less than \$20,000. this grant has developed and expanded to more than \$200,000.00. As we noted in our first report to you, this grant is responsible and supports the entire legal division of the Massachusetts Commission Against Discrimination, as well as a large number of field representatives and support service personnel.

With the appointment by the President of a new chair to the Equal Employment Opportunity Commission the commissioners of MCAD took the opportunity to travel to Washington en banc and meet with Chairman Norton and her representatives. The purpose of this meeting was to lay the ground work for the negotiation of an even larger grant program. While a substantial increase in funding may not occur during this contract period, we feel confident that the basis has been laid for substantial expansion of this grant and program during the 1978-1979 period. However, we have not yet determined that we cannot secure some additional funding for the present fiscal period. During the second week of September, 1977, this Commission's General Counsel began meeting with EEOC representatives for the formulation of a new contract and further funding. The exact nature of the contract, the grant and the funding will be available in either an addendum to this report or in our next report to you.

6. PUBLIC INFORMATION

As part of the personnel cutback mandated by the Office of Administration and Finance during 1975-1976, the then constituted Commission opted to drop the position entitled "Public Information



Officer." While there was some concern that an agency this small did not require its own internal information officer, this Commission has felt the loss of this office and the staff person working therefrom. Many of the major efforts of the Commission and the elements of its reorganization require public notice, public hearing and exposure to both the complainants' and respondents' bar. This function, normally carried out by the Public Information Officer, has been sorely missed. Accordingly, the commissioners three have individually and collectively assumed this function and have devoted large amounts of their personal and private time to radio, television, newspaper and other media appearances in order to carry out this function. It is estimated that the three commissioners have had more than 50 personal appearances and/or interviews carried in the major media. These have included both of Boston's newspapers, two national magazines, most of Boston's local TV news programs and talk shows. Before the end of September, 1977, the commissioners will meet en banc with a major committee of the Boston Bar Association to discuss the implementation of the Commission's Management Information System and case processing procedures. On balance, this exposure has been received very well and the audience most receptive. It has established an avenue of communication wherein the Commission can respond to the needs of both the complainant and respondent bar alike. It is this Commission's hope that this public image and public relations aspect will continue, however, we intend to narrow the scope by meeting individually and collectively with advocacy type groups rather than general exposure. During coming months,



we intend to be meeting with representatives of the Massachusetts Law Reform Institute, the Committee for Civil Rights under the Law, other committees of the Boston and the Massachusetts Bar Association, and those other groups that have vested interests in the multiple jurisdiction over which this agency has statutory authority.

7. THE INTERN PROGRAM

From time to time over the past two or three years, this Commission has made some use of volunteers from the local law schools and colleges. These individuals have been placed in various volunteer functions with the agency but, primarily in either the law department or as assistants in writing cases for the office of Field Operations. The success of these volunteers and legal intern programs has prompted this Commission to make a concerted effort this fall to develop a broader-based program for each semester for the next two years. We intend to prepare a plan for legal and non-legal interns to be culled from the various local law schools and colleges. This plan should be available within the next 10 days and implementation thereof completed by the end of November, 1977. It is our expectation that we will attract as many as 20 volunteer legal and non-legal interns working for each semester, in the office of the Commission under the direction of two senior field representatives, who, in turn, will be under the supervision of the Director of Investigations and the General Counsel. In consideration of their services, the Commission has provided and will provide a detailed curriculum to the student's school as well as supervision



and evaluation of the student assigned to the agency. Evaluations by the Commission will be forwarded to the student's school. In many instances volunteers are actually working for course credit, and, therefore, their work product has normally and generally been exceptional

8. FEDERAL/STATE CIVIL RIGHTS REVIEW

During the past ninety days, the division staff initiated the implementation of the grant review program for state and federal grants in fulfilling the HUD grant contract entered into during the previous quarter. Start-up administrative activity, such as the recruitment and hiring of personnel; staff training and development of program objectives were accomplished. Additionally, the following activities were achieved during the 90 day time span:

a. Standard operating procedures for A-95 review were developed.

b. Draft affirmative action guidelines for housing and employment have been developed.

c. Initial program development for review of state grant projects were developed with the Executive Office of Environmental Affairs.

d. Near final drafts of department of Community Affairs Affirmative Action guidelines have been negotiated and will be the subject of public hearings within the next 45 days.

e. Memoranda of Agreements with a significant number of cities and towns have been entered into, following negotiations. These Memoranda of Agreements include, for the first time, the



requirement for the development of affirmative fair housing programs by cities and towns.

f. A training conference for cities and towns to direct them in the review methods and operations of the Commission was held in June. Approximately 50 cities and towns attended the conference along with representatives from certain state organizations. Beyond providing technical assistance and information with respect to recent program developments by the federal Office of Revenue Sharing.

g. Civil Rights Review - a number of reviews were conducted under the A-95 review process of cities' and towns' applications. Additional follow-up occurred on comments made during the previous quarter, such as the City of Boston's Community Development Block Grant Application. The commissioners met with the Secretary of HUD, as well as a number of other federal officials, with respect to issues raised in that report in an attempt to effect solutions to those issues.

9. GENERAL COMMENTS

While a portion of the initial three months time span was devoted to program initiation and developments of advisory guidelines, this next quarter, of September through November, will provide the first real test of full implementation of the programs. It is anticipated that large numbers of communities will come into compliance with the Commission through the development of Memoranda of Agreements by the development of affirmative action programs in the area of internal public employment, contract compliance, and housing.



10. PUBLIC EMPLOYMENT COMPLAINT ACTIVITY

Two field investigators are assigned to the division to conduct investigation of complaints filed against public sector employers at the state, county and local level. During this time approximately 34 public sector cases were completed by the two field investigators. Additionally, liaison work began with the newly appointed State Director of Affirmative Action in integrating elements of that office's programs into both the Commission complaint procedure and to the civil rights review procedure under A-95 state reviews.

11. CONTRACT COMPLIANCE

Renewed attention with respect to the enforcement of the contract compliance program was initiated. The Commission formed a Construction Task Force, consisting of Commission and other public agency members who are involved or impact the issue of minority and female employment in the construction industry. Initial progress in this area included assistance in the development of proposed contract language for use by state agencies (and local government) on the Part II, Public Works Program. Additionally, the Commissioner of Labor and Industries will be issuing an official ruling on the ability of state, city and town entities to fulfill their Economic Development Administration requirements within the framework of certain state bid statutes.

The Commission has also completed a redraft of the proposed public hearing guidelines for initiation of formal non-compliance proceedings against state contractors who appear to have failed to meet numerical hiring goals. Preliminary activity is prepared

with respect to hearings of those complaints within the next thirty days.

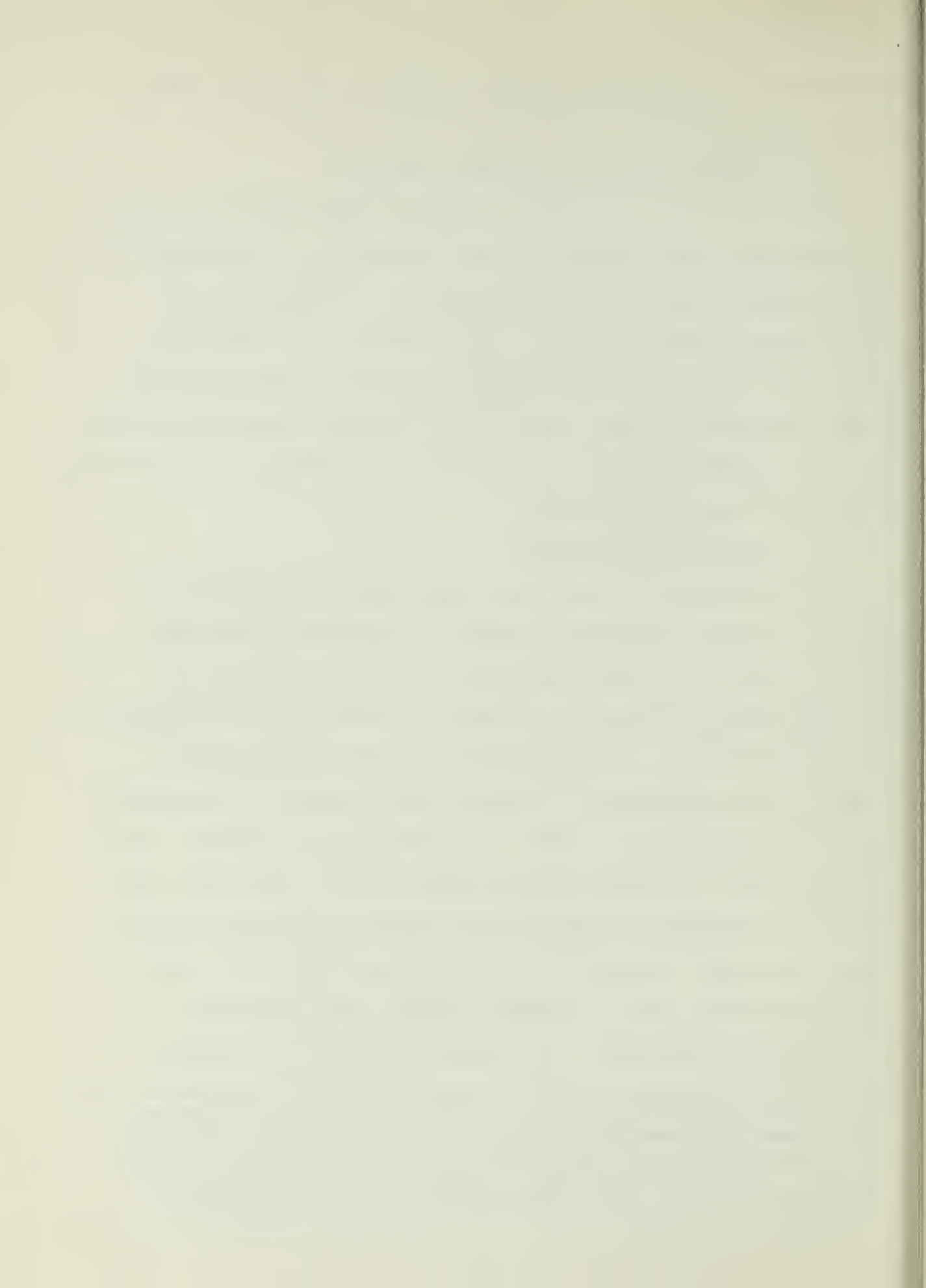
12. FEDERAL OFFICE OF REVENUE SHARING

The Commission continued to assist local cities and towns in developing their response to the findings, or investigations, by the Federal Office of Revenue Sharing of allegations of discrimination under the act. As an example, the Commission was able to negotiate a Memorandum of Agreement with the City of Melfrose which allowed the Office of Revenue Sharing to close the case, absent a formal finding of discrimination, but providing a specific remedy as required.

13. EXECUTIVE SECRETARY

The creation of a full-time commission has allowed us to institute certain management changes. The present Chairman serves as the chief administrative officer and carries out the administrative functions formerly performed by the director of administration*. The position of executive secretary, created at the inception of the MCAD was occupied by one person until his resignation in 1976. From 1976 until September 1977, the executive secretary's position was vacant. With both the position of Executive Secretary and Director of Administration vacant, we made a careful study of both positions, the salaries, job descriptions, and the Agency's needs with respect to administrative function. We determined to fill the position

*The individual holding this position was brought to MCAD by the former chairman under an IPA transfer with the Department of Housing and Urban Development absorbing almost 50% of his salary. By mutual agreement, the IPA transfer terminated on the 30th of June, 1977, and the person holding the position returned to his post at HUD in San Francisco, California.



of Executive Secretary and began immediately a long and hard search for the best qualified person to fill this post. We screened more than 35 applications and interviewed approximately 10 candidates, four of whom were finalists. On or about the first of September, 1977, the Commissioners unanimously selected Ms. Virginia Parks for the post of Executive Secretary.

With the Executive Secretary in place, the Commissioners now have more available time to carry out the policy making and quasi-judicial functions of the Agency.



REGULATIONS CONCERNING DISCRIMINATION IN CREDIT

Pursuant to Massachusetts General Laws, Chapter 30A, Section 2(3), the Massachusetts Commission Against Discrimination has found that immediate adoption of these amendments is necessary for the preservation of the general welfare. Therefore, observance of the requirements of notice and public hearing prior to their effective date would be contrary to the public interest.

SECTION 1. AUTHORITY, SCOPE, ENFORCEMENT, FEDERAL INTERPRETATIONS, EFFECTIVE DATE.

(a) Authority and Scope. This Regulation comprises the regulations issued by the Massachusetts Commission Against Discrimination pursuant to §3(5) of Chapter 151B of the General Laws. This Regulation implements the following provisions of Massachusetts statutory law: §§4(3B), 4(10), 4(14) and 5 of Chapter 151B of the General Laws and §98 of Chapter 272 of the General Laws (the foregoing statutory provisions are referred to herein collectively as the "Credit Discrimination Statutes"). Except as otherwise provided herein, this Regulation applies to all persons who are creditors, as defined in §2(m).

(b) Administrative Enforcement. Compliance with the requirements imposed under the Credit Discrimination Statutes and this Regulation shall be enforced by the Commission.

(c) Interpretations by the Board of Governors. The Commission takes note of the fact that this Regulation is similar in scope and terminology to Regulation B¹ of the Board of Governors of the Federal Reserve System. Because of the substantive similarities between many of the provisions of this Regulation and the comparable provisions of Regulation B, the Commission has established the procedure specified below in this §1(c) regarding the effect to be given by the Commission to official Board interpretations and official staff interpretations² which are issued under Regulation B by the Board or by a duly authorized official of the Board.

Each official Board interpretation and official staff interpretation, whether issued prior to, on or subsequent to the date of this Regulation, that interprets a provision of Regulation B that is similar in substance to a provision of this Regulation shall, until rescinded by the Board, be deemed by the Commission

¹ 12 CFR 202.

² See the description of "official Board interpretations" and "official staff interpretations" appearing at §202.1(d) of Regulation B.



to be an advisory ruling issued by the Commission under §8 of Chapter 30A of the General Laws. If the Commission determines that any official Board interpretation or official staff interpretation that is deemed to be an advisory ruling is contrary to the purposes or meaning of any of the Credit Discrimination Statutes, the Commission shall commence an amendment process under §2 of Chapter 30A of the General Laws to amend the provisions of this Regulation that were interpreted by the applicable official Board Interpretation or official staff interpretation.

If any provision of Regulation B is amended by the Board and the provision so amended is similar in substance to a provision of this Regulation, the Commission shall, as soon as practicable after the Board's promulgation of the amendment, commence an amendment process under §2 of Chapter 30A of the General Laws with a view toward determining if the provisions of the Credit Discrimination Statutes would be supported by the adoption of a similar amendment to this Regulation.

(d) Interpretation. This Regulation shall be interpreted in a manner consistent with the Federal Equal Credit Opportunity Act and Regulation B as they may from time to time be interpreted or amended.

(e) Severability. The provisions of this Regulation are severable, and the fact that any provision is found to be invalid for any reason shall not affect the validity of any other provision.

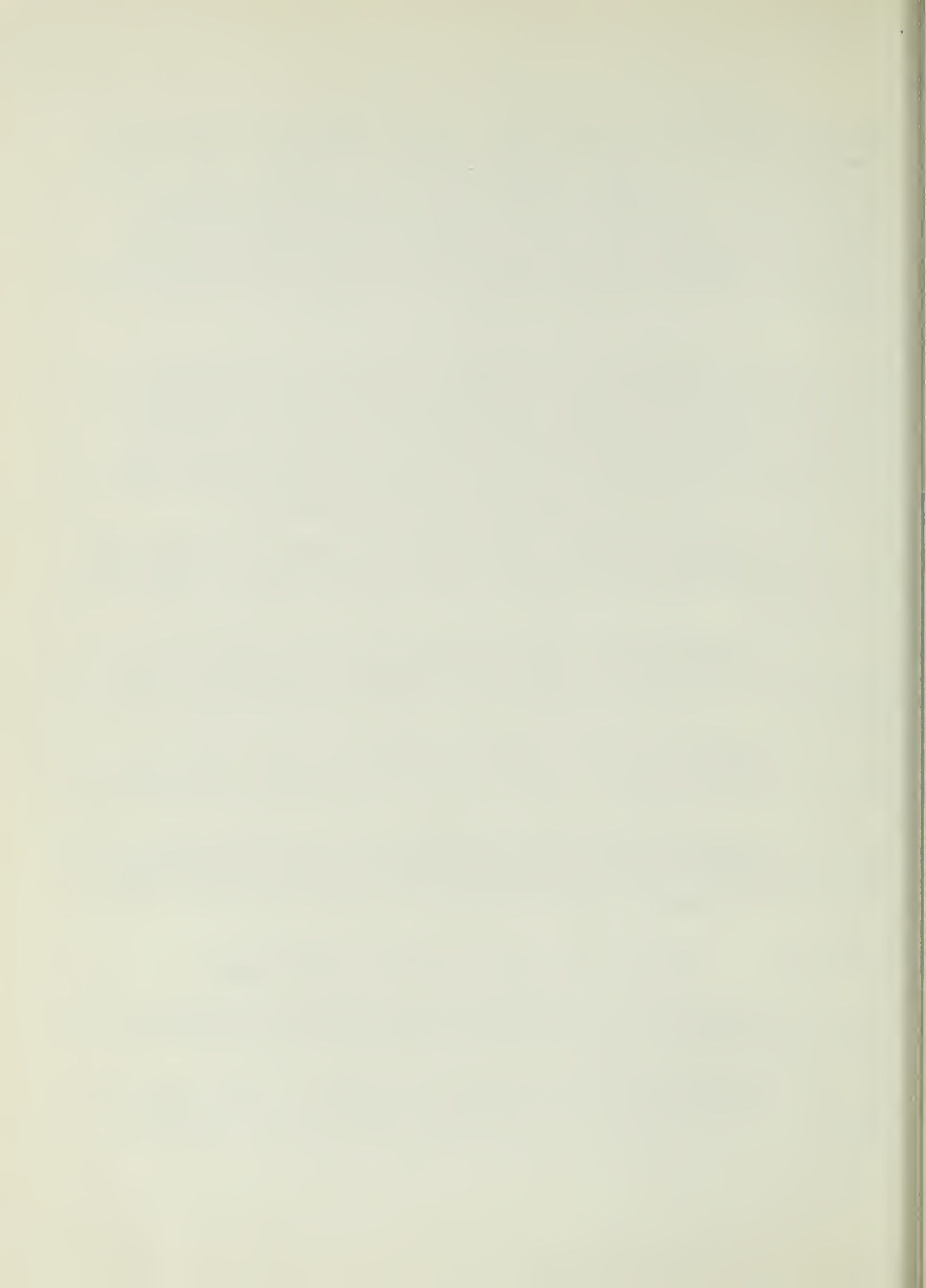
(f) Effective Date. Unless otherwise stated, this Regulation shall be effective with respect to all transactions occurring on or after June 1, 1977.

(g) Repeal of Existing Regulations. This Regulation hereby repeals the COMMISSION'S REGULATIONS CONCERNING DISCRIMINATION IN CREDIT BECAUSE OF SEX OR MARITAL STATUS, effective date January 31, 1975, as amended August 1, 1975.

SECTION 2. DEFINITIONS AND RULES OF CONSTRUCTION.

For the purposes of this Regulation, unless the context indicates otherwise, the following definitions and rules of construction shall apply:

(a) Account means an extension of credit. When employed in relation to an account, the word use refers only to open end credit.



(b) Adverse action. (1) For the purposes of notification of action taken, statement of reasons for denial, and record retention, the term means:

(i) a refusal to grant credit in substantially the amount or on substantially the terms requested by an applicant unless the creditor offers to grant credit other than in substantially the amount or on substantially the terms requested by the applicant and the applicant uses or expressly accepts the credit offered; or

(ii) a termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a classification of a creditor's accounts; or

(iii) a refusal to increase the amount of credit available to an applicant when the applicant requests an increase in accordance with procedures established by the creditor for the type of credit involved.

(2) The term does not include:

(i) a change in the terms of an account expressly agreed to by an applicant; or

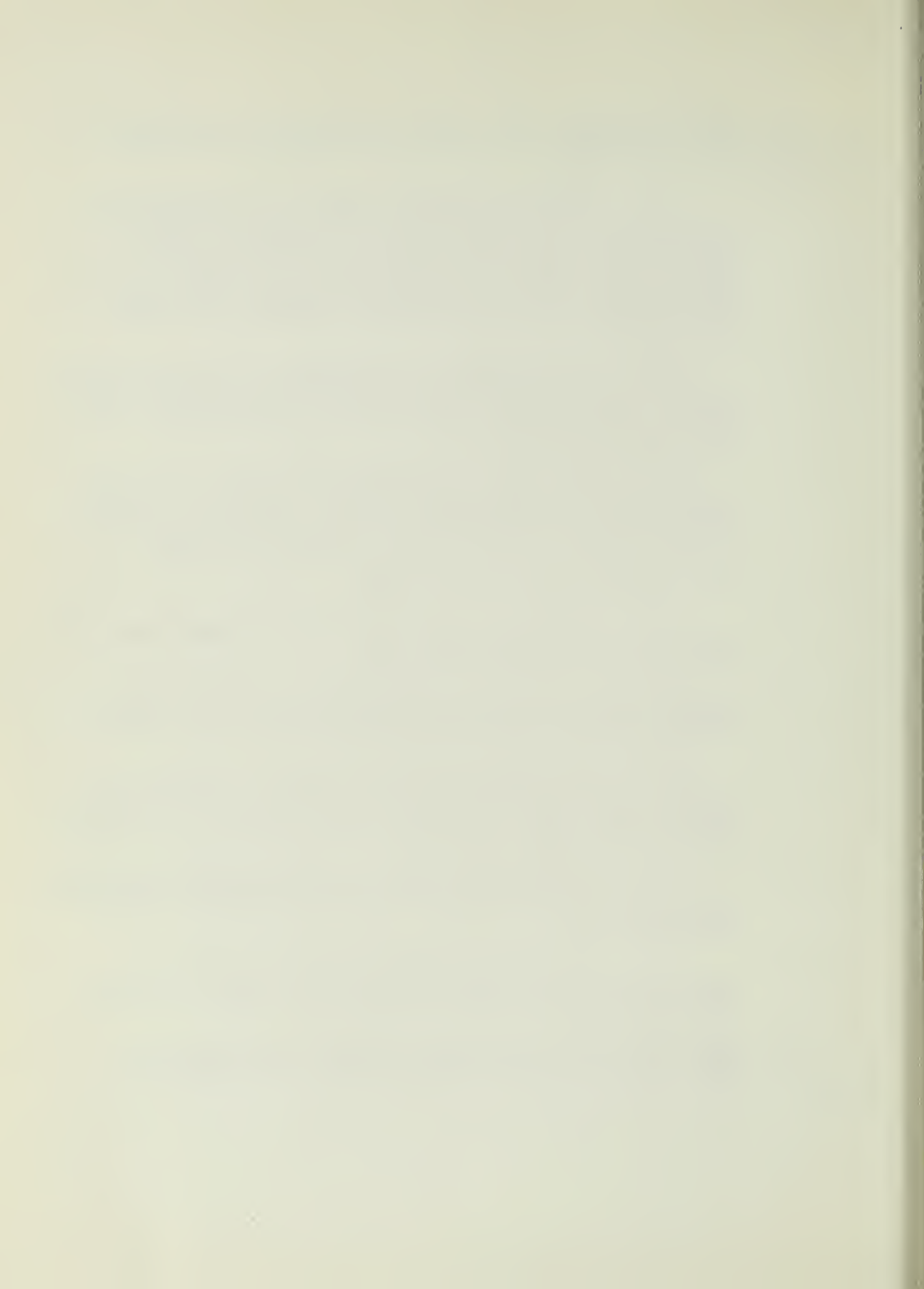
(ii) any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account; or

(iii) a refusal to extend credit at a point of sale or loan in connection with the use of an account because the credit requested would exceed a previously established credit limit on the account; or

(iv) a refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) a refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(c) Age refers only to natural persons and means the number of fully elapsed years from the date of an applicant's birth.



(d) Applicant refers only to natural persons and means any such natural person who either requests or has received, within the Commonwealth, an extension of credit from a creditor, and includes any such natural person who is or may be contractually liable regarding an extension of credit other than a guarantor, surety, endorser, or similar party.

(e) Application means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit. A completed application for credit means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral); provided, however, that the creditor has exercised reasonable diligence in obtaining such information. Where an application is incomplete respecting matters that the applicant can complete, a creditor shall make a reasonable effort to notify the applicant of the incompleteness and shall allow the applicant a reasonable opportunity to complete the application.

(f) Board means the Board of Governors of the Federal Reserve System.

(g) Commission means the Massachusetts Commission Against Discrimination.

(h) Consumer credit means credit extended to a natural person in which the money, property, or service that is the subject of the transaction is primarily for personal, family, or household purposes.

(i) Contractually liable means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) Credit means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) Credit card means any card, plate, coupon book, or other single credit device existing for the purpose of being



used from time to time upon presentation to obtain money, property, or services on credit.

(l) Credit Discrimination Statutes means the following provisions of the General Laws: §§4(3B), 4(10), 4(14) and 5 of Chapter 151B and §98 of Chapter 272.

(m) Creditor means a person, including, but not limited to, banks, trust companies, licensed lenders, mortgage lenders, savings and loan associations, credit unions, credit card issuers, utility companies, finance companies, wholesale and retail merchants, and educational institutions, who, in the ordinary course of business regularly participates in the decision of whether or not to extend credit. The term includes an assignee, transferee, or subrogee of an original creditor who so participates; but an assignee, transferee, subrogee, or other creditor is not a creditor regarding any violation of any Credit Discrimination Statute or this Regulation committed by the original or another creditor unless the assignee, transferee, subrogee, or other creditor knew or had reasonable notice of the act, policy, or practice that constituted the violation before its involvement with the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(n) Credit transaction means every aspect of an applicant's dealings with a creditor regarding an application for, or an existing extension of, credit including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures.

(o) Discriminate against an applicant means to treat an applicant less favorably than other applicants.

(p) Elderly means an age of 62 or older.

(q) Empirically derived credit system. (1) The term means a credit scoring system that evaluates an applicant's creditworthiness primarily by allocating points (or by using a comparable basis for assigning weights) to key attributes describing the applicant and other aspects of the transaction. In such a system, the points (or weights) assigned to each attribute, and hence the entire score:

(i) are derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants of a creditor who applied



for credit within a reasonable preceding period of time; and

(ii) determine, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy.

(2) A demonstrably and statistically sound, empirically derived credit system is a system:

(i) in which the data used to develop the system, if not the complete population consisting of all applicants, are obtained from the applicant file by using appropriate sampling principles;

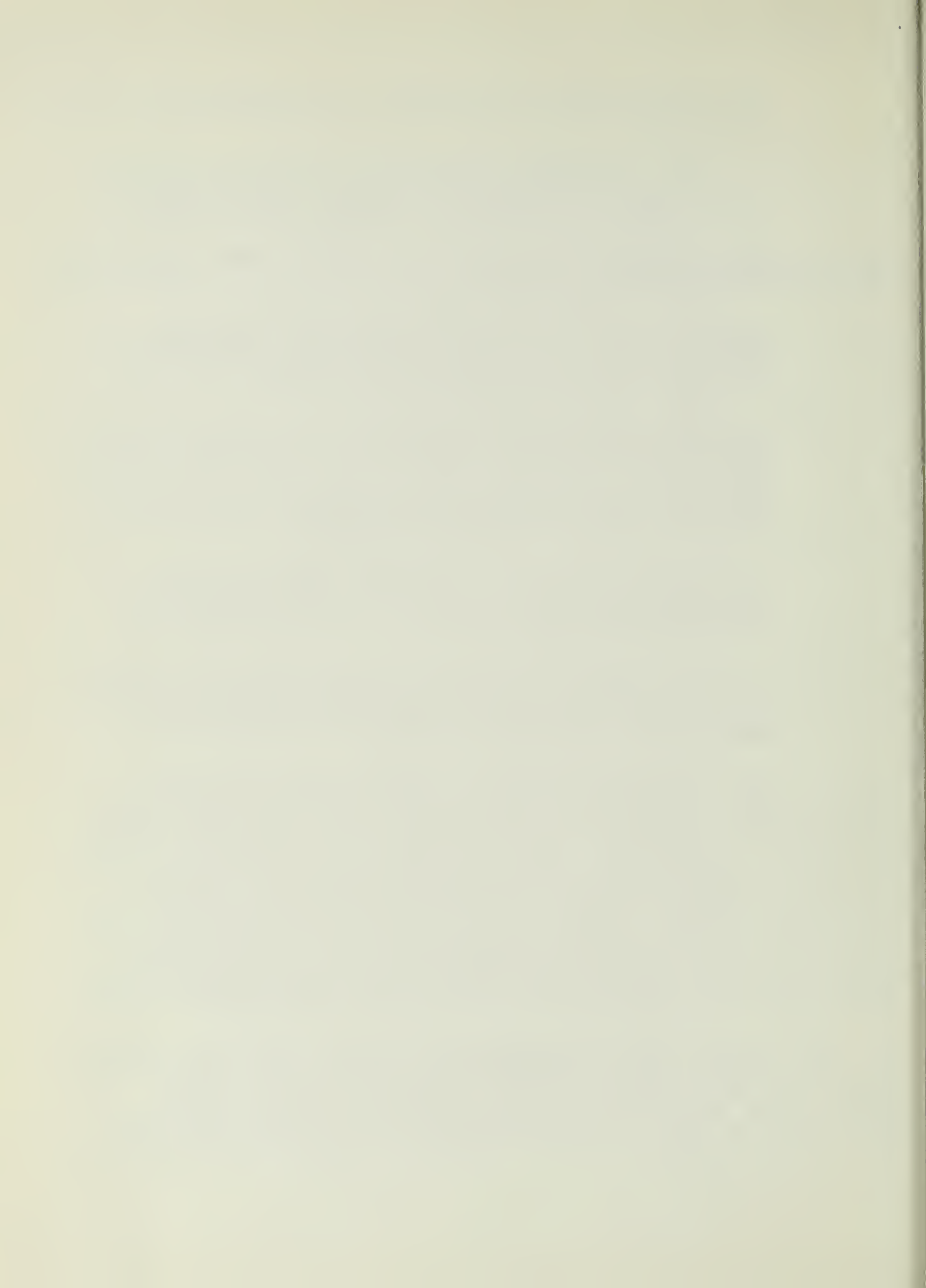
(ii) which is developed for the purpose of predicting the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system, including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment;

(iii) which, upon validation using appropriate statistical principles, separates creditworthy and non-creditworthy applicants at a statistically significant rate; and

(iv) which is periodically revalidated as to its predictive ability by the use of appropriate statistical principles and is adjusted as necessary to maintain its predictive ability.

(3) A creditor may use a demonstrably and statistically sound, empirically derived credit system obtained from another person or may obtain credit experience from which such a system may be developed. Any such system must satisfy the tests set forth in subsections (1) and (2); provided that, if a creditor is unable during the development process to validate the system based on its own credit experience in accordance with subsection (2)(iii), then the system must be validated when sufficient credit experience becomes available. A system that fails this validity test shall henceforth be deemed not to be a demonstrably and statistically sound, empirically derived credit system for that creditor.

(r) Extend credit and extension of credit mean the granting of credit in any form and include, but are not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open end credit plan; the refinancing or other renewal of credit, including the issuance



of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations or the continuance of existing credit without any special effort to collect at or after maturity.

(s) Good faith means honesty in fact in the conduct or transaction.

(t) Inadvertent error means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(u) Judgmental system of evaluating applicants means any system for evaluating the creditworthiness of an applicant other than a demonstrably and statistically sound, empirically derived credit system.

(v) Marital status means the state of being unmarried, married, or separated, as defined by applicable State law. For the purposes of this Regulation the term "unmarried" includes persons who are single, divorced, or widowed.

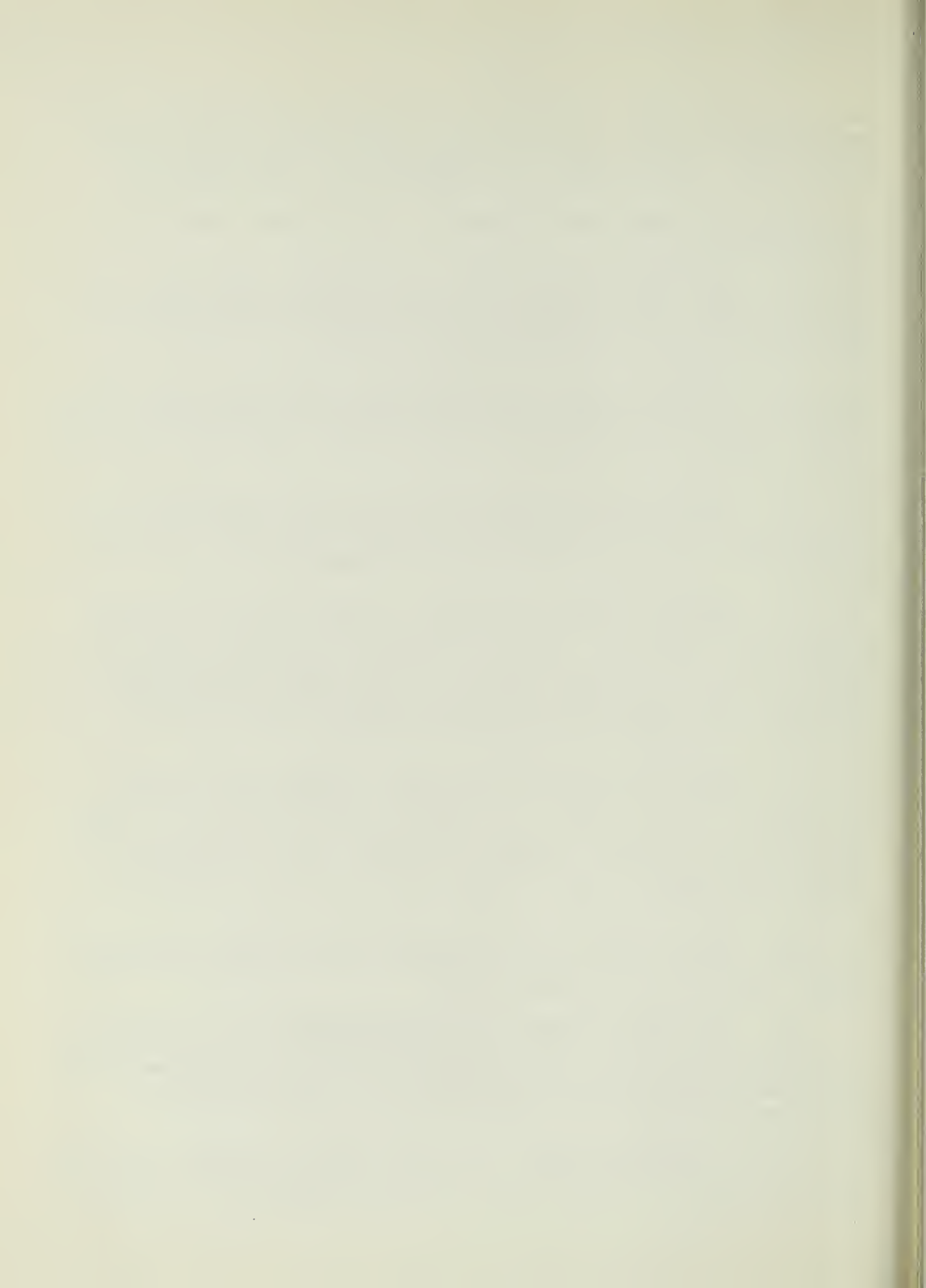
(w) Negative factor or value, in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly applicants and are most favored by a creditor on the basis of age.

(x) Open end credit means credit extended pursuant to a plan under which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device as the plan may provide. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

(y) Person means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(z) Pertinent element of creditworthiness, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(aa) Prohibited basis means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); or the fact



that all or part of the applicant's income derives from any public assistance program.³

(bb) Public assistance program means any Federal, State, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need. The term includes, but is not limited to, Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, medical assistance, and unemployment compensation.

(cc) State means any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(dd) Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the substance of any provision of this Regulation may be drawn from them.

(ee) Footnotes shall have the same legal effect as the text of this Regulation, whether they are explanatory or illustrative in nature.

³ The first clause of the definition is not limited to characteristics of the applicant. Therefore, "prohibited basis" as used in this Regulation refers not only to the race, color, religion, national origin, sex, marital status, or age of an applicant, but refers also to the characteristics of individuals with whom an applicant deals. This means, for example, that, under the general rule stated in section 4, a creditor may not discriminate against a non-Jewish applicant because of that person's business dealings with Jews, or discriminate against an applicant because of the characteristics of persons to whom the extension of credit relates (e.g., the prospective tenants in an apartment complex to be constructed with the proceeds of the credit requested), or because of the characteristics of other individuals residing in the neighborhood where the property offered as collateral is located. A creditor may take into account, however, any applicable law, regulation, or executive order, restricting dealings with citizens or governments of other countries or imposing limitations regarding credit extended for their use.

The second clause is limited to an applicant's receipt of public assistance income.



SECTION 3. SPECIAL TREATMENT FOR CERTAIN CLASSES OF TRANSACTIONS.

(a) Classes of transactions afforded special treatment. The following classes of transactions are afforded specialized treatment:

(1) extensions of credit relating to transactions under public utility tariffs involving services provided through pipe, wire, or other connected facilities if the charges for such public utility services, the charges for delayed payment, and any discount allowed for early payment are filed with, or reviewed or regulated by, an agency of the Federal government, a State, or a political subdivision thereof;

(2) extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934;

(3) extensions of incidental consumer credit, other than of the types described in subsections (a)(1) and (2):

(i) that are not made pursuant to the terms of a credit card account;

(ii) on which no finance charge as defined in section 1 of Chapter 140C of the General Laws is or may be imposed; and

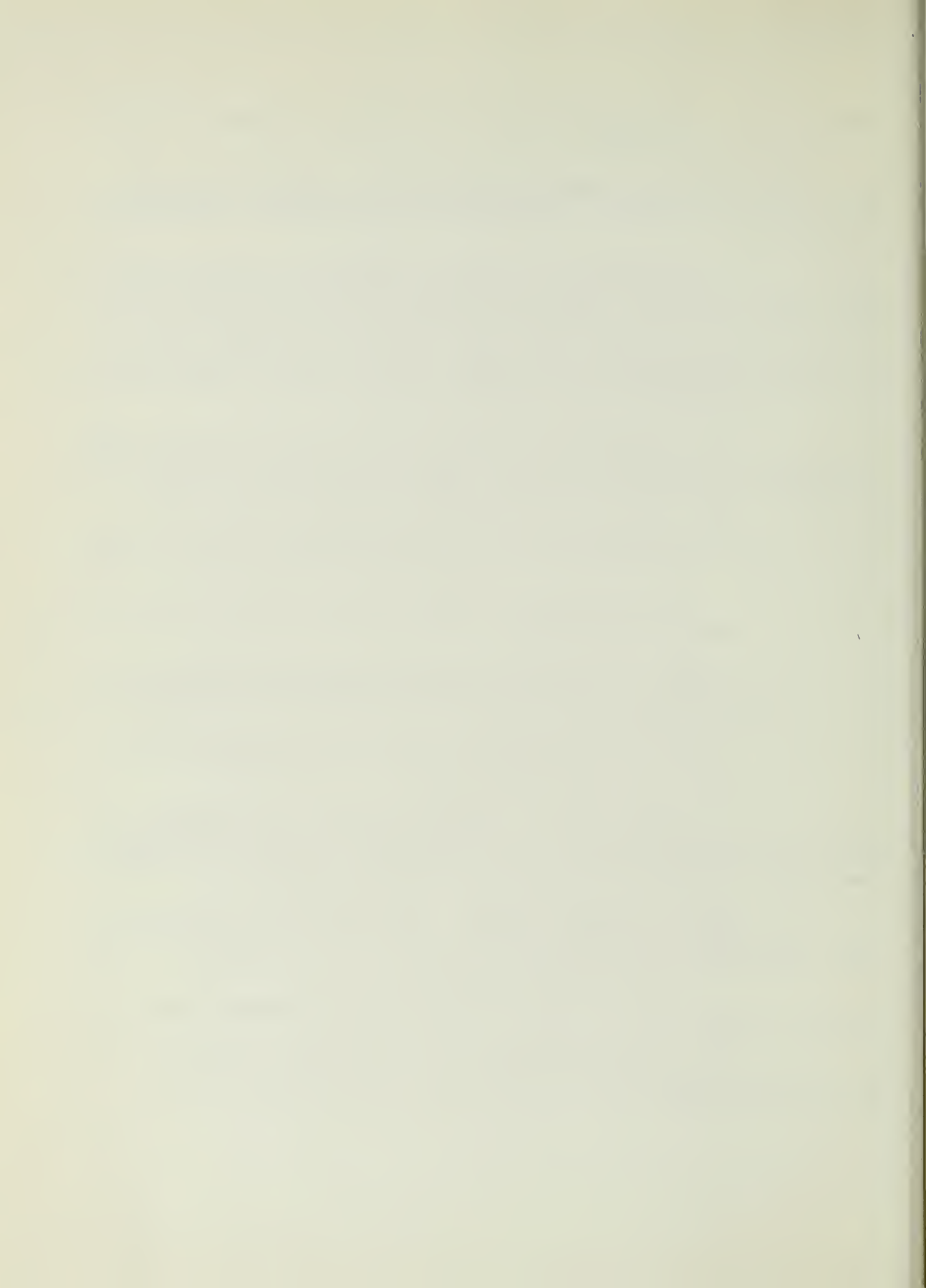
(iii) that are not payable by agreement in more than four instalments; and

(4) extensions of credit primarily for business or commercial purposes, including extensions of credit primarily for agricultural purposes, but excluding extensions of credit of the types described in subsections (a)(1) and (2).

(b) Public utilities credit. The following provisions of this Regulation shall not apply to extensions of credit of the type described in subsection (a)(1):

(1) section 5(d)(1) concerning information about marital status;

(2) section 10 relating to furnishing of credit information; and



(3) section 12(b) relating to record retention.

(c) Securities credit. The following provisions of this Regulation shall not apply to extensions of credit of the type described in subsection (a)(2):

(1) section 5(c) concerning information about a spouse or former spouse;

(2) section 5(d)(1) concerning information about marital status;

(3) section 5(d)(3) concerning information about the sex of an applicant;

(4) section 7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(5) section 7(c) relating to action concerning open end accounts, but only to the extent the action taken is on the basis of a change of name or marital status;

(6) section 7(d) relating to signature of a spouse or other person;

(7) section 10 relating to furnishing of credit information; and

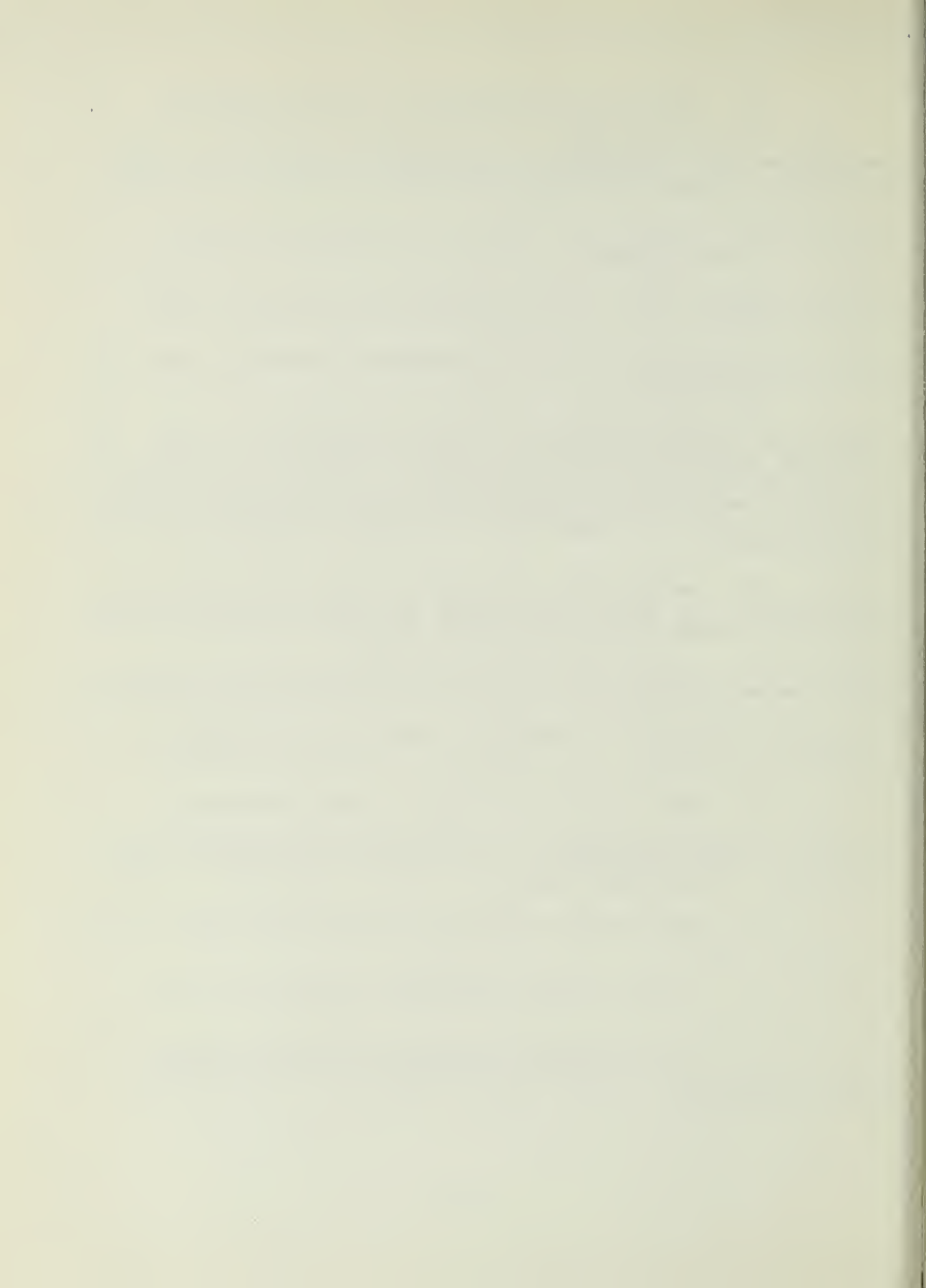
(8) section 12(b) relating to record retention.

(d) Incidental credit. The following provisions of this Regulation shall not apply to extensions of credit of the type described in subsection (a)(3):

(1) section 5(c) concerning information about a spouse or former spouse;

(2) section 5(d)(1) concerning information about marital status;

(3) section 5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;



(4) section 5(d)(3) concerning information about the sex of an applicant to the extent necessary for medical records or similar purposes;

(5) section 7(d) relating to signature of a spouse or other person;

(6) section 9 relating to notifications;

(7) section 10 relating to furnishing of credit information; and

(8) section 12(b) relating to record retention.

(e) Business credit. The following provisions of this Regulation shall not apply to extensions of credit of the type described in subsection (a)(4):

(1) section 5(d)(1) concerning information about marital status;

(2) section 9 relating to notifications, unless an applicant, within 30 days after oral or written notification that adverse action has been taken, requests in writing the reasons for such action;

(3) section 10 relating to furnishing of credit information; and

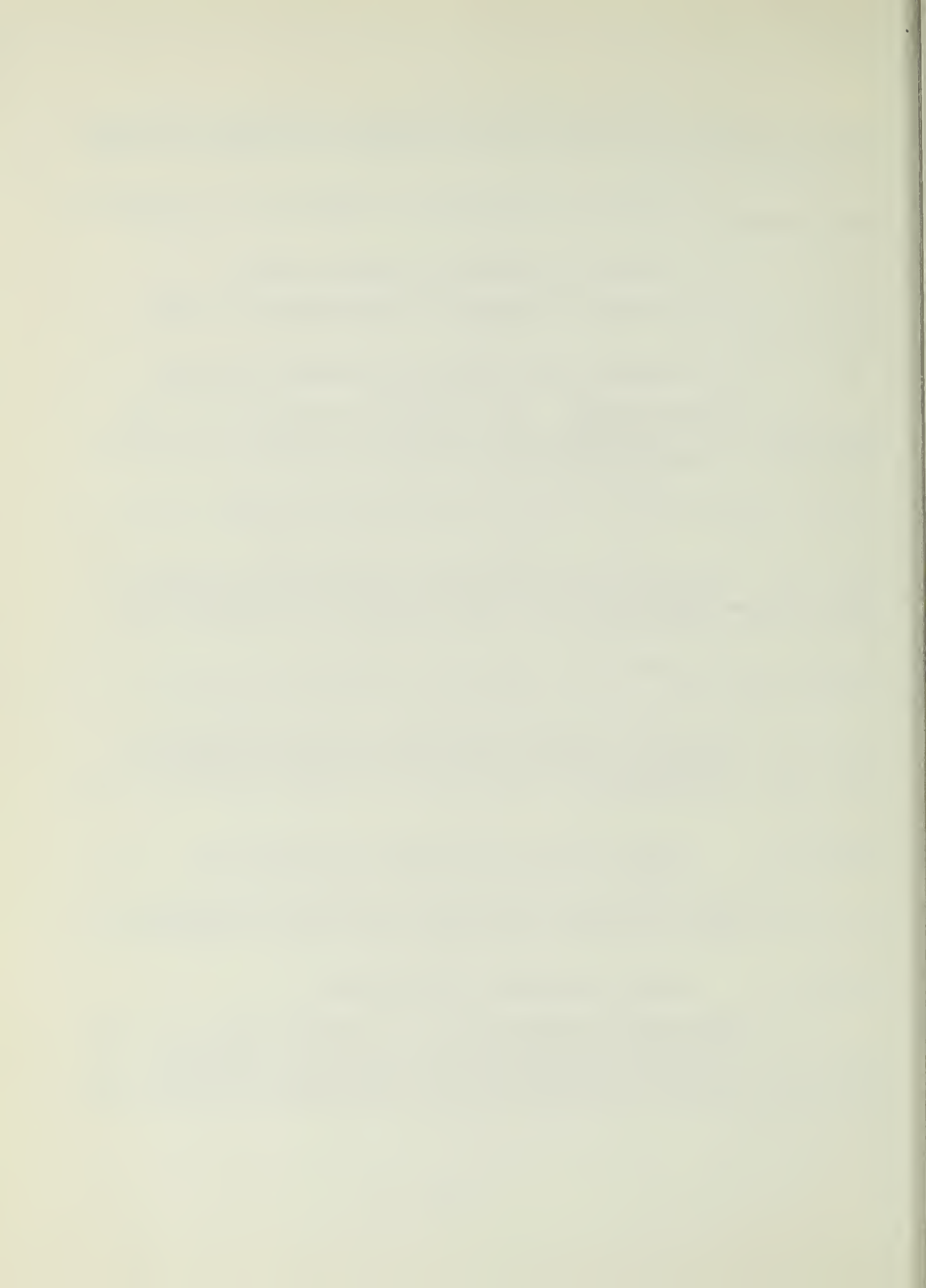
(4) section 12(b) relating to record retention, unless an applicant, within 90 days after adverse action has been taken, requests in writing that the records relating to the application be retained.

SECTION 4. GENERAL RULE PROHIBITING DISCRIMINATION.

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

SECTION 5. RULES CONCERNING APPLICATIONS.

(a) Discouraging applications. A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.



(b) General rules concerning requests for information.

(1) Except as otherwise provided in this section, a creditor may request any information in connection with an application.⁴

(2) Notwithstanding any other provision of this section, a creditor shall request an applicant's race/national origin, sex, and marital status as required in section 13 of Regulation B (information for monitoring purposes). In addition, a creditor may obtain such information as may be required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General of the United States or a similar State official) to monitor or enforce compliance with any Credit Discrimination Statute, this Regulation, or other Federal or State statute or regulation.

(3) The provisions of this section limiting permissible information requests are subject to the provisions of section 7(e) regarding insurance and sections 8(c) and (d) regarding special purpose credit programs.

(c) Information about a spouse or former spouse. (1) Except as permitted in this subsection, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) A creditor may request any information concerning an applicant's spouse (or former spouse under (v) below) that may be requested about the applicant if:

(i) the spouse will be permitted to use the account; or

(ii) the spouse will be contractually liable upon the account; or

(iii) the applicant is relying on the spouse's income as a basis for repayment of the credit requested; or

⁴ This subsection is not intended to limit or abrogate any Massachusetts or other law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information. Furthermore, permission to request information should not be confused with how it may be utilized, which is governed by section 6 (rules concerning evaluation of applications).



(iv) the applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a State; or

(v) the applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) A creditor may request an applicant to list any account upon which the applicant is liable and to provide the name and address in which such account is carried. A creditor may also ask the names in which an applicant has previously received credit.

(d) Information a creditor may not request. (1) If an applicant applies for an individual, unsecured account, a creditor shall not request the applicant's marital status, unless the applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a State.⁵ Where an application is for other than individual, unsecured credit, a creditor may request an applicant's marital status. Only the terms "married," "unmarried," and "separated" shall be used, and a creditor may explain that the category "unmarried" includes single, divorced, and widowed persons.

(2) A creditor shall not inquire whether any income stated in an application is derived from alimony, child support, or separate maintenance payments, unless the creditor appropriately discloses to the applicant that such income need not be

⁵ This provision does not preclude requesting relevant information that may indirectly disclose marital status, such as asking about liability to pay alimony, child support, or separate maintenance; the source of income to be used as a basis for the repayment of the credit requested, which may disclose that it is a spouse's income; whether any obligation disclosed by the applicant has a co-obligor, which may disclose that the co-obligor is a spouse or former spouse; or the ownership of assets, which may disclose the interest of a spouse, when such assets are relied upon in extending the credit. Such inquiries are allowed by the general rule of subsection (b)(1).



revealed if the applicant does not desire the creditor to consider such income in determining the applicant's creditworthiness. Since a general inquiry about income, without further specification, may lead an applicant to list alimony, child support, or separate maintenance payments, a creditor shall provide an appropriate notice to an applicant before inquiring about the source of an applicant's income, unless the terms of the inquiry (such as an inquiry about salary, wages, investment income, or similarly specified income) tend to preclude the unintentional disclosure of alimony, child support, or separate maintenance payments.

(3) A creditor shall not request the sex of an applicant. An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form appropriately discloses that the designation of such a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(4) A creditor shall not request information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. This does not preclude a creditor from inquiring about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(5) A creditor shall not request the race, color, religion, or national origin of an applicant or any other person in connection with a credit transaction. A creditor may inquire, however, as to an applicant's permanent residence and immigration status.

(e) Application forms. A creditor need not use written applications. If a⁶ creditor chooses to use written forms, it may design its own, use forms prepared by another person, or use the appropriate model application forms contained in Appendix B to Regulation B. If a creditor chooses to use an Appendix B form, it may change the form:

⁶ A creditor also may continue to use any application form that complies with the requirements of prior Regulations of the Commission concerning credit discrimination until its present stock of those forms is exhausted or until March 23, 1978, whichever occurs first.



(1) by asking for additional information not prohibited by this section;

(2) by deleting any information request; or

(3) by rearranging the format without modifying the substance of the inquiries; provided that in each of these three instances the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries are included in the appropriate places if the items to which they relate appear on the creditor's form. If a creditor uses an appropriate Appendix B model form or to the extent that it modifies such a form in accordance with the provisions of clauses (2) or (3) of the preceding sentence or the instructions to Appendix B, that creditor shall be deemed to be acting in compliance with the provisions of subsections (c) and (d).

SECTION 6. RULES CONCERNING EVALUATION OF APPLICATIONS.

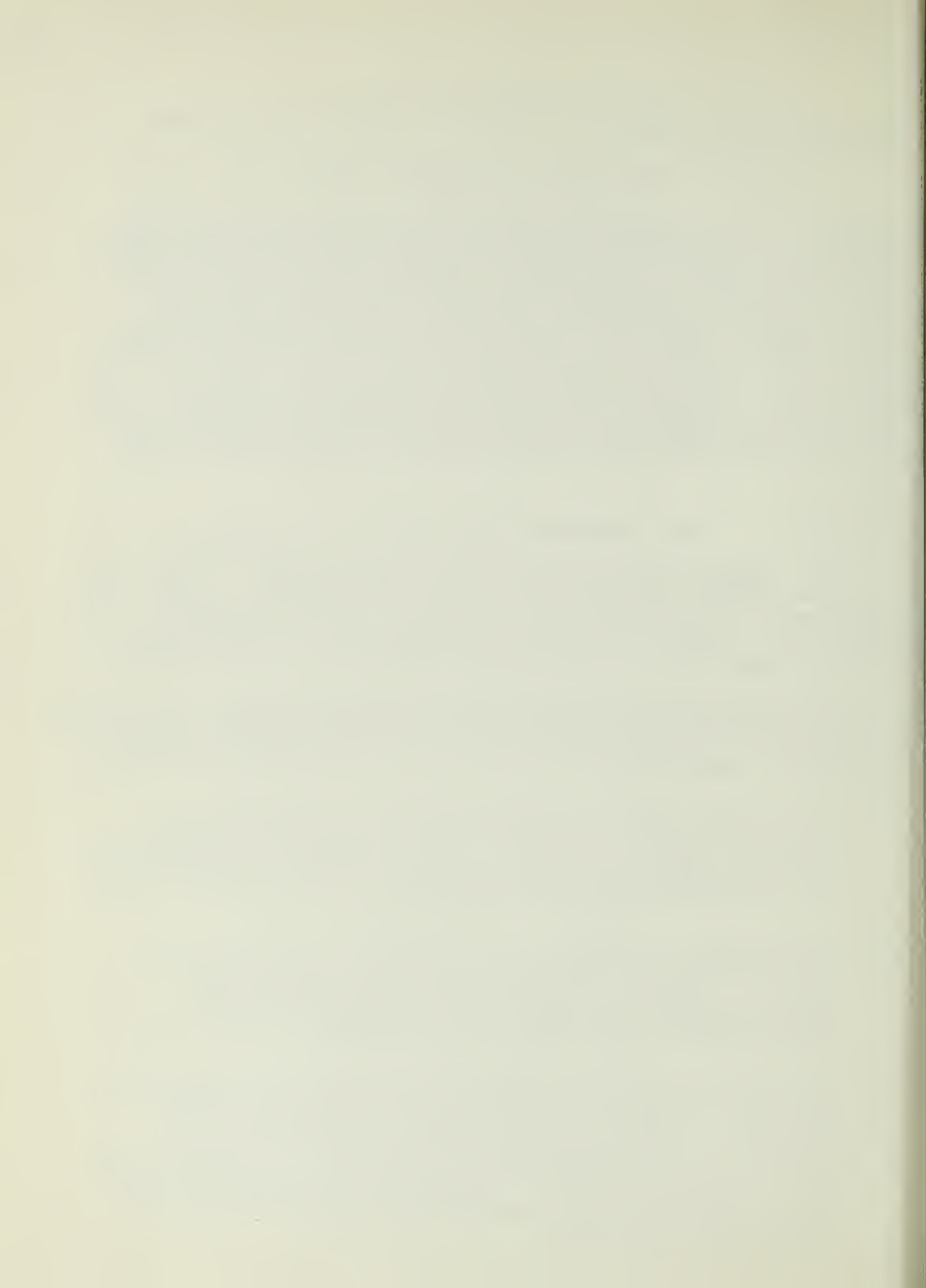
(a) General rule concerning use of information. Except as otherwise provided in this Regulation, a creditor may consider in evaluating an application any information that the creditor obtains, so long as the information is not used to discriminate against an applicant on a prohibited basis.⁷

(b) Specific rules concerning use of information. (1) Except as provided in this Regulation a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.⁸

(2)(i) Except as permitted in this subsection, a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

⁷ The Commission intends this Regulation to be interpreted in light of the Supreme Judicial Court's opinion in Wheelock College v. Massachusetts Commission Against Discrimination, 1976 Mass. Adv. Sh. 2334.

⁸ This provision does not prevent a creditor from considering the marital status of an applicant or the source of an applicant's income for the purpose of ascertaining the creditor's rights and remedies, applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness. Furthermore, a prohibited basis may be considered in accordance with section 8 (special purpose credit programs).



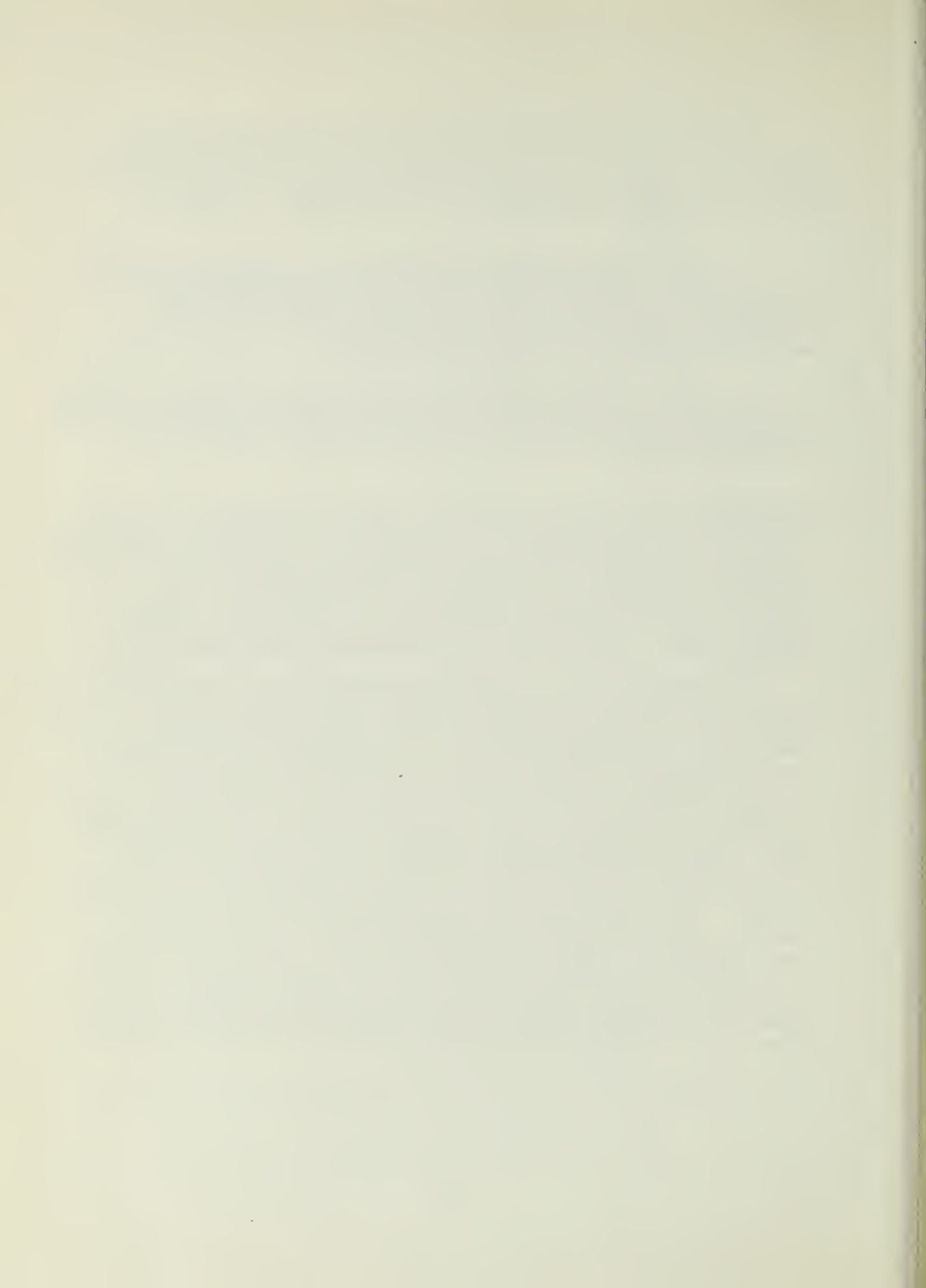
(ii) In a demonstrably and statistically sound, empirically derived credit system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.⁹

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is to be used to favor the elderly applicant in extending credit.

⁹ Concerning income derived from a public assistance program, a creditor may consider, for example, the length of time an applicant has been receiving such income; whether an applicant intends to continue to reside in the jurisdiction in relation to residency requirements for benefits; and the status of an applicant's dependents to ascertain whether benefits that the applicant is presently receiving will continue.

Concerning age, a creditor may consider, for example, the occupation and length of time to retirement of an applicant to ascertain whether the applicant's income (including retirement income, as applicable) will support the extension of credit until its maturity; or the adequacy of any security offered if the duration of the credit extension will exceed the life expectancy of the applicant. An elderly applicant might not qualify for a five-percent down, 30-year mortgage loan because the duration of the loan exceeds the applicant's life expectancy and the cost of realizing on the collateral might exceed the applicant's equity. The same applicant might qualify with a larger downpayment and a shorter loan maturity. A creditor could also consider an applicant's age, for example, to assess the significance of the applicant's length of employment or residence (a young applicant may have just entered the job market; an elderly applicant may recently have retired and moved from a long-time residence).



(3) A creditor shall not use, in evaluating the creditworthiness of an applicant, assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or, for that reason, will receive diminished or interrupted income in the future.

(4) A creditor shall not take into account the existence of a telephone listing in the name of an applicant for consumer credit. A creditor may take into account the existence of a telephone in the residence of such an applicant.

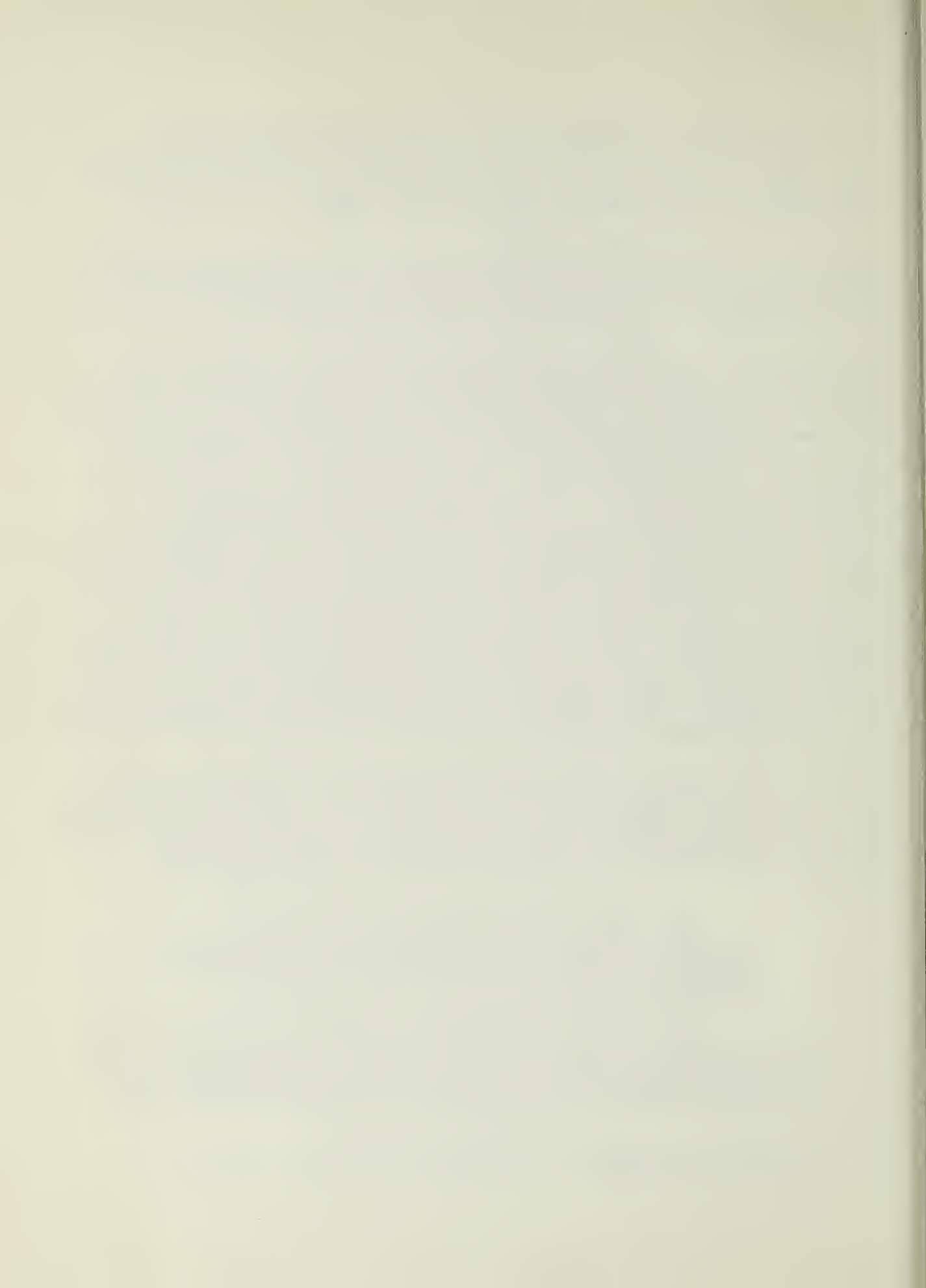
(5) A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of the applicant because of a prohibited basis or because the income is derived from part-time employment, or from an annuity, pension, or other retirement benefit; but a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. Where an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, a creditor shall consider such payments as income to the extent that they are likely to be consistently made. Factors that a creditor may consider in determining the likelihood of consistent payments include, but are not limited to, whether the payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor where available to the creditor under the Massachusetts Fair Credit Reporting Act or other applicable laws.¹⁰

(6) To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness, a creditor shall consider (unless the failure to consider results from an inadvertent error):

(i) the credit history, when available, of accounts designated as accounts that the applicant is permitted to use or for which the applicant is contractually liable;

(ii) on the applicant's request, any information that the applicant may present tending to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

¹⁰ Sections 50 through 68 of Chapter 93 of the General Laws.



(iii) on the applicant's request, the credit history, when available, of any account reported in the name of a person other than the applicant or the applicant's parent or guardian that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and such additional information as may be necessary to ascertain its rights and remedies regarding repayment.

(c) State property laws. A creditor's consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute unlawful discrimination for the purposes of the Credit Discrimination Statutes or this Regulation.

SECTION 7. RULES CONCERNING EXTENSIONS OF CREDIT.

(a) Individual accounts. A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) Designation of name. A creditor shall not prohibit an applicant from opening or maintaining an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) Action concerning existing open end accounts. (1) In the absence of evidence of inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open end account on the basis of the applicant's reaching a certain age or retiring, or on the basis of a change in the applicant's name or marital status:

- (i) require a reapplication; or
- (ii) change the terms of the account; or
- (iii) terminate the account.

(2) A creditor may require a reapplication regarding an open end account on the basis of a change in an applicant's marital status where the credit granted was based on income earned by the applicant's spouse if the applicant's income alone at the time of the original application would not support the amount of credit currently extended.

(d) Signature of spouse or other person. (1) Except as provided in this subsection, a creditor shall not require the



signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.

(2) If an applicant requests unsecured credit and relies in part upon property to establish creditworthiness, a creditor may consider State law; the form of ownership of the property; its susceptibility to attachment, execution, severance, and partition; and other factors that may affect the value to the creditor of the applicant's interest in the property. If necessary to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property relied upon available to satisfy the debt in the event of default.

(3) If a married applicant requests unsecured credit and resides in a community property State or if the property upon which the applicant is relying is located in such a State, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the community property available to satisfy the debt in the event of default if:

(i) applicable State law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) the applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to community property.

(4) If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property being offered as security available to satisfy the debt in the event of default, for example, any instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) If, under a creditor's standards of creditworthiness, the personal liability of an additional party is



necessary to support the extension of the credit requested,¹¹ a creditor may request that the applicant obtain a co-signer, guarantor, or the like. The applicant's spouse may serve as an additional party, but a creditor shall not require that the spouse be the additional party. For the purposes of subsection (d), a creditor shall not impose requirements upon an additional party that the creditor may not impose upon an applicant.

(e) Insurance. Differentiation in the availability, rates, and terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant shall not constitute a violation of any Credit Discrimination Statute or this Regulation, but a creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, or disability insurance is not available on the basis of the applicant's age. Notwithstanding any other provision of this Regulation, information about the age, sex, or marital status of an applicant may be requested in an application for insurance.

SECTION 8. SPECIAL PURPOSE CREDIT PROGRAMS.

(a) Standards for programs. Subject to the provisions of subsection (b), the Credit Discrimination Statutes and this Regulation are not violated if a creditor refuses to extend credit to an applicant solely because the applicant does not qualify under the special requirements that define eligibility for the following types of special purpose credit programs:

(1) any credit assistance program expressly authorized by Federal or State law for the benefit of an economically disadvantaged class of persons; or

(2) any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) any special purpose credit program offered by a for-profit organization or in which such an organization participates to meet special social needs, provided that:

¹¹ If an applicant requests individual credit relying on the separate income of another person, a creditor may require the signature of the other person to make the income available to pay the debt.



(i) the program is established and administered pursuant to a written plan that (A) identifies the class or classes of persons that the program is designed to benefit and (B) sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) the program is established and administered to extend credit to a class of persons who, pursuant to the customary standards of creditworthiness used by the organization extending the credit, either probably would not receive such credit or probably would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) Applicability of other rules. (1) All of the provisions of this Regulation shall apply to each of the special purpose credit programs described in subsection (a) to the extent that those provisions are not inconsistent with the provisions of this section.

(2) A program described in subsections (a)(2) or (a)(3) shall qualify as a special purpose credit program under subsection (a) only if it was established and is administered so as not to discriminate against an applicant on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), or income derived from a public assistance program; except that all program participants may be required to share one or more of those characteristics so long as the program was not established and is not administered with the purpose of evading the requirements of the Credit Discrimination Statutes or this Regulation.

(c) Special rule concerning requests and use of information. If all participants in a special purpose credit program described in subsection (a) are or will be required to possess one or more common characteristics relating to race, color, religion, national origin, sex, marital status, age, or receipt of income from a public assistance program and if the special purpose credit program otherwise satisfies the requirements of subsection (a), then, notwithstanding the prohibitions of sections 5 and 6, the creditor may request of an applicant and may consider, in determining eligibility for such program, information regarding



the common characteristics required for eligibility. In such circumstances, the solicitation and consideration of that information shall not constitute unlawful discrimination for the purposes of the Credit Discrimination Statutes or this Regulation.

(d) Special rule in the case of financial need. If financial need is or will be one of the criteria for the extension of credit under a special purpose credit program described in subsection (a), then, notwithstanding the prohibitions of sections 5 and 6, the creditor may request and consider, in determining eligibility for such program, information regarding an applicant's marital status, income from alimony, child support, or separate maintenance, and the spouse's financial resources. In addition, notwithstanding the prohibitions of section 7(d), a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if required by Federal or State law. In such circumstances, the solicitation and consideration of that information and the obtaining of a required signature shall not constitute unlawful discrimination for the purposes of the Credit Discrimination Statutes or this Regulation.

SECTION 9. NOTIFICATIONS.

(a) Notification of action taken, Equal Credit notice, and statement of specific reasons.

(1) Notification of action taken. A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, or adverse action regarding, the application (notification of approval may be express or by implication, where, for example, the applicant receives a credit card, money, property, or services in accordance with the application);

(ii) 30 days after taking adverse action on an uncompleted application;

(iii) 30 days after taking adverse action regarding an existing account; and

(iv) 90 days after the creditor has notified the applicant of an offer to grant credit other than in substantially the amount or on substantially the terms requested by the applicant if the applicant during those 90 days has not expressly accepted or used the credit offered.



(2) Content of notification. Any notification given to an applicant against whom adverse action is taken shall be in writing and shall contain: a statement of the action taken; a statement of the general purposes of the Credit Discrimination Statutes; the name and address of both the Commission and the Federal agency that administers compliance with the Federal Equal Credit Opportunity Act concerning the creditor giving the notification; and

(i) a statement of specific reasons for the action taken; or

(ii) a disclosure of the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days of such notification, the disclosure to include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the statement of reasons orally, the notification shall also include a disclosure of the applicant's right to have any oral statement of reasons confirmed in writing within 30 days after a written request for confirmation is received by the creditor.^{11a}

(3) Multiple applicants. If there is more than one applicant, the notification need only be given to one of them, but must be given to the primary applicant where one is readily apparent.

(4) Multiple creditors. If a transaction involves more than one creditor and the applicant expressly accepts or uses the credit offered, this section does not require notification of adverse action by any creditor. If a transaction involves more than one creditor and either no credit is offered or the applicant does not expressly accept or use any credit offered, then each creditor taking adverse action must comply with this section. The required notification may be provided indirectly through a third party, which may be one of the creditors, provided that the identity of each creditor taking adverse action is disclosed. Whenever the notification is to be provided through a third party, a creditor shall not be liable for any act or omission of the third party that constitutes a violation of this section if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and was maintaining procedures reasonably adapted to avoid any such violation.

^{11a} The Commission is currently reviewing the oral notice procedure in this section, and would appreciate comments on the advisability of eliminating the oral notice option and mandating written disclosure of reasons in all cases.



(b) Form of Equal Credit notice and statement of specific reasons.

(1) Equal Credit notice. A creditor satisfies the requirements of subsection (a)(2) regarding a statement of the general purposes of the Credit Discrimination Statutes, the name and address of the Commission and the name and address of the appropriate Federal enforcement agency if it provides the following notice, or one that is substantially similar. A creditor may continue to use any form of Equal Credit notice that complies with §202.9(b) of Regulation B until its present stock of forms containing such §202.9(b) notice is exhausted or June 1, 1978, whichever is later.

The Federal Equal Credit Opportunity Act and comparable provisions of Massachusetts law prohibit creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); or because all or part of the applicant's income derives from any public assistance program. The Federal Equal Credit Opportunity Act also prohibits creditors from discriminating against credit applicants because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the Federal law concerning this creditor is (name and address as specified by Regulation B). The state agency that administers compliance with the state law is the Massachusetts Commission Against Discrimination, One Ashburton Place, Boston, Massachusetts 02108.

(2) Statement of specific reason. A statement of reasons for adverse action shall be sufficient if it is specific and indicates the principal reason(s) for the adverse action. A creditor may formulate its own statement of reasons in check-list or letter form or may use all or a portion of the sample form printed below, which, if properly completed, satisfies the requirements of subsection (a)(2)(i). Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.



STATEMENT OF CREDIT DENIAL,
TERMINATION, OR CHANGE

DATE _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit:

Description of Adverse Action Taken:

PRINCIPAL REASON(S) FOR ADVERSE
ACTION CONCERNING CREDIT

Credit application incomplete
 Insufficient credit references
 Unable to verify credit references
 Temporary or irregular employment
 Unable to verify employment
 Length of employment
 Insufficient income
 Excessive obligations
 Unable to verify income
 Inadequate collateral
 Too short a period of residence
 Temporary residence
 Unable to verify residence
 No credit file
 Insufficient credit file
 Delinquent credit obligations
 Garnishment, attachment, foreclosure, repossession,
 or suit
 Bankruptcy
 We do not grant credit to any applicant on the
 terms and conditions you request
 Appraiser's report, obtained from: (name/address/telephone
 number): _____
 Other, specify: _____



DISCLOSURE OF USE OF INFORMATION
OBTAINED FROM AN OUTSIDE SOURCE

Disclosure inapplicable

Information obtained in a report from a consumer
reporting agency

Name: _____

Street Address: _____

Telephone number: _____

Information obtained from an outside source other
than a consumer reporting agency. Under the Fair
Credit Reporting Act, you have the right to make
a written request, within 60 days of receipt of
this notice, for disclosure of the nature of the
adverse information.

Creditor's name: _____

Creditor's address: _____

Creditor's telephone number: _____

[Add Equal Credit notice]

(3) Other information. The notification required by
subsection (a)(1) may include other information so long as it
does not detract from the required content. This notification
also may be combined with any disclosures required under any
law, provided that all requirements for clarity and placement
are satisfied; and it may appear on either or both sides of the
paper if there is a clear reference on the front to any informa-
tion on the back.

(c) Oral notifications. The applicable requirements of
this section are satisfied by oral notifications (including
statements of specific reasons) in the case of any creditor that
did not receive more than 150 applications during the calendar
year immediately preceding the calendar year in which the
notification of adverse action is to be given to a particular
applicant.

(d) Withdrawn applications. Where an applicant submits an
application and the parties contemplate that the applicant will
inquire about its status, if the creditor approves the application



and the applicant has not inquired within 30 days after applying, then the creditor may treat the application as withdrawn and need not comply with subsection (a)(1).

(e) Failure of compliance. A failure to comply with this section shall not constitute a violation when caused by an inadvertent error; provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

(f) Notification. A creditor notifies an applicant when a writing addressed to the applicant is delivered or mailed to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicant.

SECTION 10. FURNISHING OF CREDIT INFORMATION.

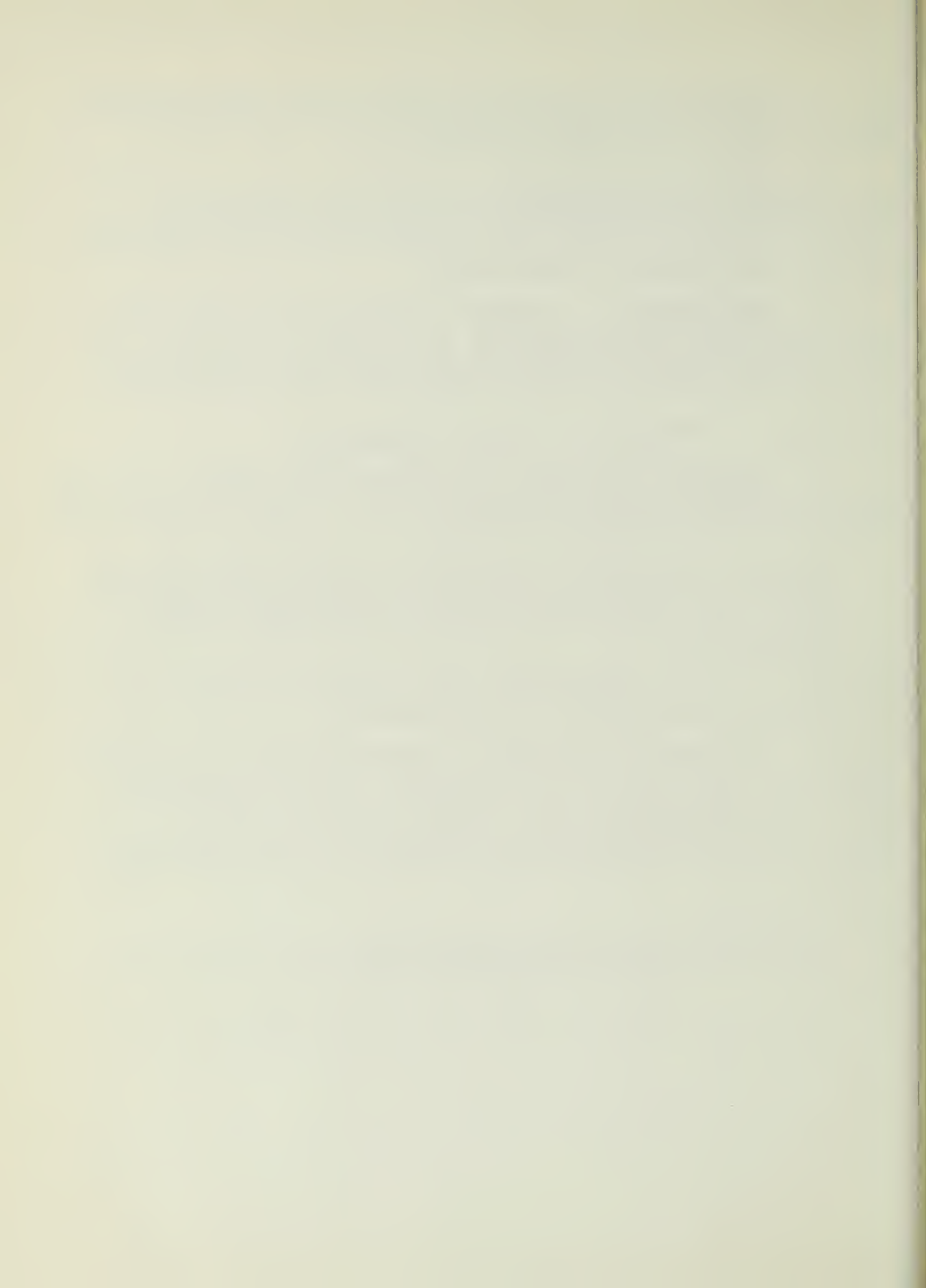
(a) Accounts established on or after June 1, 1977. (1) For every account established on or after June 1, 1977, a creditor that furnishes credit information shall:

(i) determine whether an account offered by the creditor is one that an applicant's spouse is permitted to use or upon which the spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties; and

(ii) designate any such account to reflect the fact of participation of both spouses.¹²

(2) Except as provided in subsection (3), if a creditor furnishes credit information concerning an account designated under this subsection (a) (or designated prior to the effective date of this Regulation) to a consumer reporting agency, it shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

¹² A creditor need not distinguish between participation as a user or as a contractually liable party.



(3) If a creditor furnishes credit information concerning an account designated under this subsection (or designated prior to the effective date of this Regulation) in response to an inquiry regarding a particular applicant, it shall furnish the information in the name of the spouse about whom such information is requested.¹³

(b) Accounts established on or after January 1, 1978. (1) For every account established on or after January 1, 1978, a creditor that furnishes credit information shall:

(i) determine whether the account offered by the creditor is one that the applicant will permit to be used by another natural person who is at least eighteen years of age and who is not the applicant's child or spouse or upon which such other natural person shall be contractually liable other than as a guarantor, surety, endorser or similar party; and

(ii) unless the account has been designated under subsection (a)(1)(ii) above, designate the account to reflect the fact of the participation of both the applicant and the authorized user¹⁴ so specified by the applicant or other contractually liable party.

(2) Except as provided in subsection (3), if a creditor furnishes credit information concerning an account designated under this subsection (b) (or designated prior to the effective date of this Regulation) to a consumer reporting agency, it shall furnish the information in a manner that will enable the agency to provide access to the information in the name of the applicant and the participating party.

¹³ If a creditor learns that new parties have undertaken payment on an account, then the subsequent history of the account shall be furnished in the names of the new parties and need not continue to be furnished in the names of the former parties.

¹⁴ If an applicant permits an account to be used by more than one other participant, only one of the participants so authorized need be given the credit reporting rights referred to in subsection (b). If a spouse is one of the listed users, only the spouse shall receive such credit reporting rights.



(3) If a creditor furnishes credit information concerning an account designated under this subsection (b) (or designated prior to the effective date of this Regulation) in response to an inquiry regarding a particular applicant, it shall furnish the information in the name of the participant about whom such information is requested.

(c) Inadvertent errors. A failure to comply with this section shall not constitute a violation when caused by an inadvertent error; provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

SECTION 11. RELATION TO OTHER LAW OF THE COMMONWEALTH.

This Regulation does not alter or annul any provision of the property laws of Massachusetts, laws relating to the disposition of decedents' estates, or banking regulations directed only toward insuring the solvency of financial institutions.

SECTION 12. RECORD RETENTION.

(a) Retention of prohibited information. Retention in a creditor's files of any information, the use of which in evaluating applications is prohibited by this Regulation, shall not constitute a violation of the Credit Discrimination Statutes or this Regulation where such information was obtained:

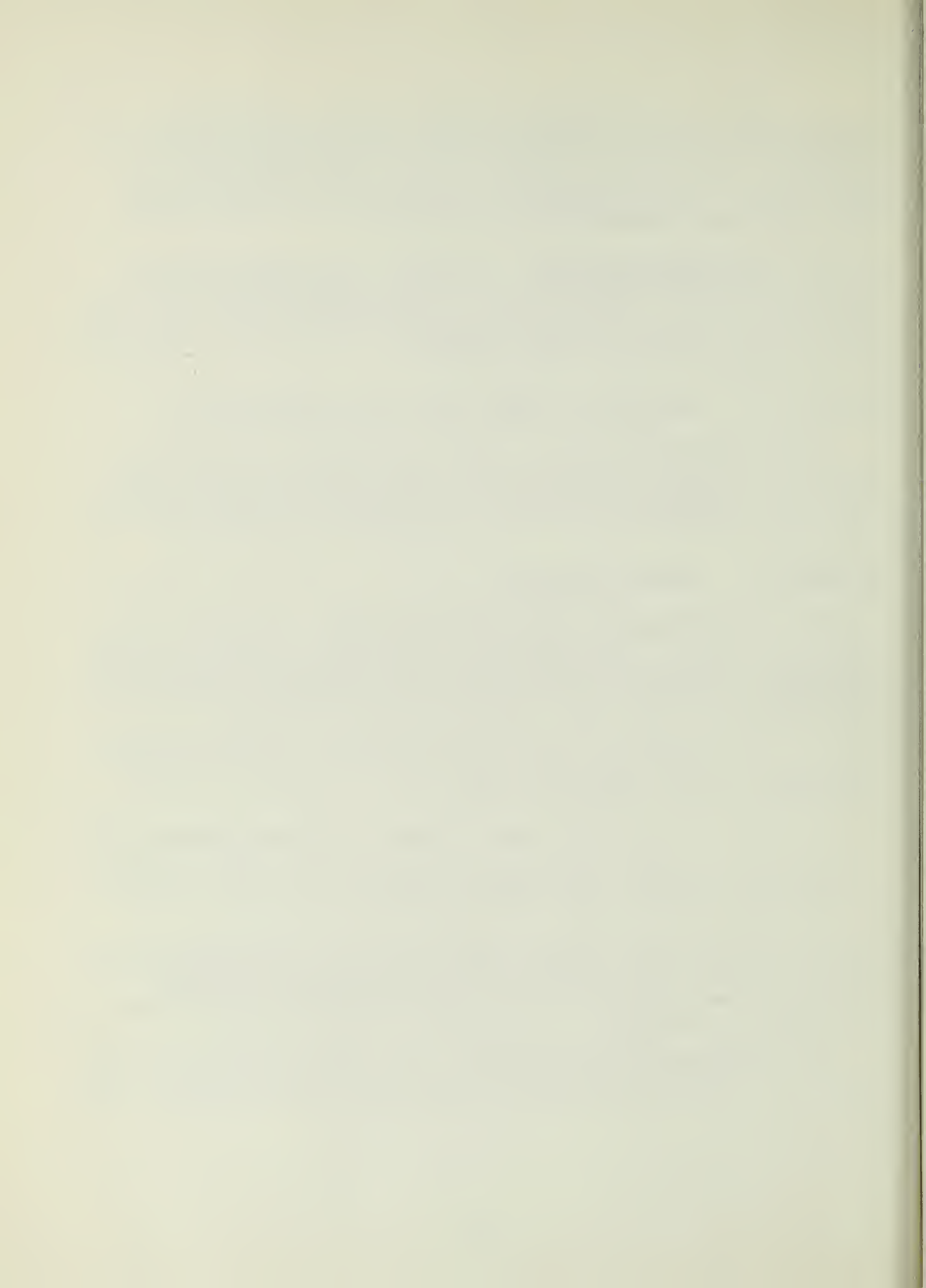
(1) from any source prior to June 1, 1977, provided that such information was not obtained in violation of prior regulations of the Commission; or

(2) at any time from consumer reporting agencies; or

(3) at any time from an applicant or others without the specific request of the creditor; or

(4) at any time as required to monitor compliance with the Federal Equal Credit Opportunity Act, Regulation B, the Credit Discrimination Statutes, this Regulation, or other Federal or State statutes or regulations dealing with credit discrimination matters.

(b) Preservation of records. (1) For 25 months after the date that a creditor notifies an applicant of action taken on an



application, the creditor shall retain as to that application in original form or a copy thereof:¹⁵

(i) any application form that it receives, any information required to be obtained concerning characteristics of an applicant to monitor compliance with this Regulation or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;

(ii) a copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum with respect thereto made by the creditor):

(A) the notification of action taken; and

(B) the statement of specific reasons for adverse action; and

(iii) any written statement submitted by the applicant alleging a violation of the credit discrimination provisions of the Federal Equal Credit Opportunity Act, Regulation B, any Credit Discrimination Statute or this Regulation.

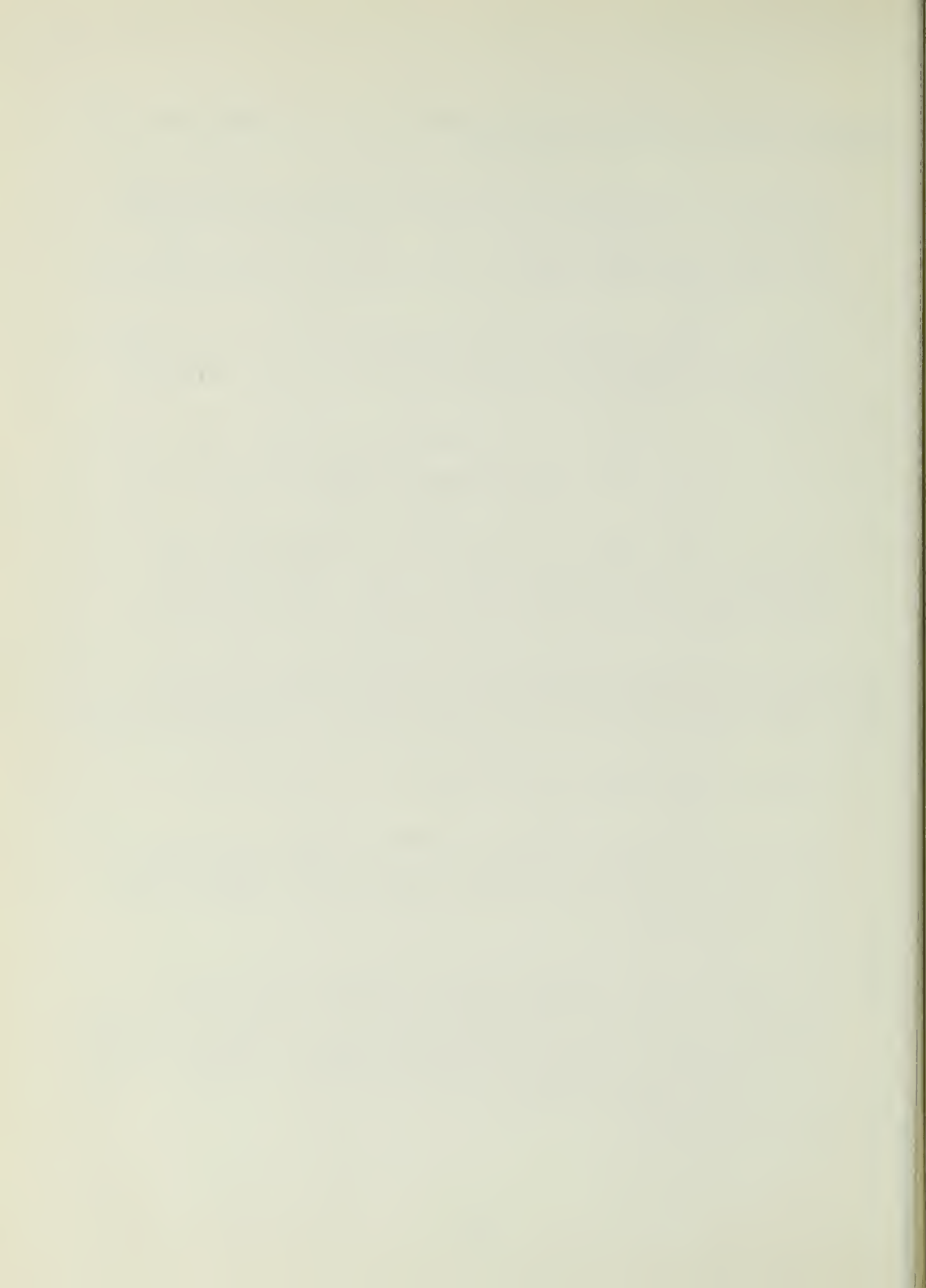
(2) For 25 months after the date that a creditor notifies an applicant of adverse action regarding an account, other than in connection with an application, the creditor shall retain as to that account, in original form or a copy thereof:¹⁶

(i) any written or recorded information concerning such adverse action; and

(ii) any written statement submitted by the applicant alleging a violation of the credit discrimination provisions of the Federal Equal Credit Opportunity Act, Regulation B, any Credit Discrimination Statute or this Regulation.

¹⁵ "A copy thereof" includes carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any accurate information retrieval system. A creditor who uses a computerized or mechanized system need not keep a written copy of a document if it can regenerate the precise text of the document upon request.

¹⁶ See footnote 15.



(3) In addition to the requirements of subsections (b)(1) and (2), any creditor that has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the credit discrimination provisions of any Credit Discrimination Statute or this Regulation, or that has been served with notice of a civil action filed by an aggrieved applicant and alleging violation of the credit discrimination provisions of any Credit Discrimination Statute or this Regulation, shall retain the information required in subsections (b)(1) and (2) until final disposition of the matter, unless an earlier time is allowed by order of the Commission or a court.

(4) In any transaction involving more than one creditor, any creditor not required to comply with section 9 (notifications) shall retain for the time period specified in subsection (b) all written or recorded information in its possession concerning the applicant, including a notation of action taken in connection with any adverse action.

(c) Failure of compliance. A failure to comply with this section shall not constitute a violation when caused by an inadvertent error.

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COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS COMMISSION AGAINST
DISCRIMINATION

Combined Third and

^ Fourth Ninety-Day Report To The
Governor And Clerks Of The
Senate and House Pursuant To
Chapter 463, Of The Acts Of 1976.

Respectfully submitted,

JANE C. EDMONDS, Chairman

ALEX RODRIGUEZ, Commissioner

SAMUEL STONEFIELD, Commissioner

May 15, 1978

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I. INTRODUCTION:

This is the combined third and fourth Ninety-Day Report submitted by the three Commissioners of the Massachusetts Commission Against Discrimination under Chapter 463 of the Acts of 1976. Since this Report marks the end of the first full year under three full-time Commissioners, the Report will direct attention to both the accomplishments of this first year and the goals still to be accomplished.

II. BACKLOG REDUCTION:

The major problem which faced the three new Commissioners in March, 1977 was the constantly growing backlog of complaints lodged with the agency. The backlog problem, which also distressed the Legislature, became the Commission's top priority, and the agency was mobilized to attack it on all fronts.

The object of the backlog effort is to investigate and make determinations on as many cases as possible, as promptly as resources permit. The results of the first stage backlog effort were reported in the second Ninety-Day Report (p.4).

The second stage of the backlog effort was initiated in October, when a Backlog Unit, consisting of two Senior MCAD investigators, CETA employees and student interns was established to spearhead the attack. The Commissioners have established a performance goal for this unit of 175 cases per month, or 700 cases per year. Fully 600 of these should be

employment cases which will be credited toward fulfilling the Agency's agreement with the E.E.O.C.

The results of the backlog effort to date can be seen in the simple statistics:

Cases in active file at the end of 1976 - 3900

Cases in active file at the end of 1977 - 3000

More cases were closed in 1977 than in any prior year in this Commission's history. Thus, despite the 1700 complaints filed in the last calendar year, the backlog of Commission cases has been reduced by 900 during the same period.

While substantial inroads have been made into the MCAD's backlog, its prompt elimination (the Commission's goal and the Commonwealth's mandate) depends upon additional funding and additional investigator's positions. At the present rate, with only the resources now available, the backlog will not be eliminated until March, 1981. This predicted date is not near enough to be acceptable to the Commissioners. Therefore they are making every effort to obtain the assistance needed to shorten the time required.

A. PUBLIC HEARINGS:

The Commissioners inherited a serious backlog problem with cases waiting for conciliation or public hearing. The Commissioners have developed a set of conciliation guidelines to make this process work more effectively. They have also established a hearing list, and have embarked on a greatly expanded hearing schedule.

THE UNIVERSITY OF CHICAGO PRESS

CHICAGO, ILLINOIS 60607

1995

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During the first year, the Commission held less than twelve hearings. The legal and investigative staff were being deployed on backlog and new case processing procedures. However, with new procedures implemented and sound management systems operational, the Commissioners can now devote more time to the public hearing role. They have established a minimum goal of twenty-six hearings. They have also entered into an agreement with the Division of Hearing Officers whereby the DHO has agreed to designate a hearing officer to conduct hearings for the Commission. This arrangement should more than double the adjudicatory capacity of the Commission.

B. INTERN PROGRAM:

Another major factor in backlog reduction has been the use of student interns. Unfortunately, this program has a built-in problem. The interns must be trained for a period at the start, work only part-time since they are also attending classes, are apt to go out of town during school vacation, and, in any case, regard their participation as temporary. Given the many interruptions of intern work, the Commissioners came to the conclusion that this essential program needed to be revised for greater cost effectiveness. Therefore a restructuring project was undertaken to define curriculum, to lay guidelines for time-commitment, and to develop a constant training mechanism. Assistance has also been sought

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from the local law schools. The effects of this restructuring have been very satisfactory since it permitted successful use of interns to make unexpected progress in the attack on the backlog. However the Commission lacks the resources needed to provide adequate supervision for the longer number of interns which would be needed to increase their rate of backlog reduction. As an alternative, if four full-time field investigators could be added to the Commission staff, the Intern Program would be less crucial in the backlog effort.

III. MANAGEMENT REORGANIZATION:

The change from four part-time Commissioners to three full-time Commissioners, one of whom was based in Springfield rather than all being based in Boston, allowed major structural changes in the MCAD.

At the highest level, administrative policy making was directly centralized by eliminating the second-rank position of Director of Administration. The Chairman is now the primary decision-maker supplemented by the other two Commissioners in selected areas. The Commissioners also decided that they, rather than the legal staff should make the ultimate determinations of "probable cause" or "lack of probable cause." This has unified the decision-making criteria and freed the legal staff to function in the more effective roles of agency counsel and trial counsel. The Commissioners have also developed a "hands on" method of dealing directly with local

advisory councils on discrimination problems and efforts. The beneficial efforts of direct contact between Commissioners and localities should be made more permanent by the state-wide advisory council to the MCAD. The council was created by recent legislation and is comprised of thirty members, eleven of whom are Chairmen of regional, MCAD advisory councils and nineteen of whom represent special interest groups specified in the statute. The Chairman of the state-wide council has been appointed by Governor Dukakis, and plans have been made for regular meetings between the council and the three Commissioners. Finally, the Commissioners have also undertaken direct action in the field of Civil Rights coordination. Further details on this activity may be found in the section titled Federal/State Civil Rights Review, infra.

At the level of office management, the Commissioners appointed an executive secretary at the start of the third quarter of their time in office. An important part of the executive secretary's job is the modernization and rationalization of the Administrative Procedures Manual. In addition, at the discretion of the Commission, the present appointee is responsible for exercising control of budget and personnel matters, implementing Commission policy, supervising the clerical staff, performing the duties of affirmative action officer, coordinating the intern program and coordinating the Management Task Force.

The Management Task Force is composed of the chief person in each of the five units: Investigations, Public Employment, Control, Agency Counsel and the Executive Secretary. This task force meets at least once a week with one or more Commissioners to report on progress, receive new assignments and generally to "grieve and groan."

To co-ordinate the rapidly expanding activities of the Commission, a computerized Rapid Charge Processing system was put into effect in June, 1977. Using this system, the Case Control Unit has been developing the capability to generate statistical reports on cases filed and cases closed monthly, by type, class and jurisdiction. The monthly reports which, in the past, were produced manually in two weeks are now produced in two days. In addition, the case status and alphabetic listing reports are now produced every week (instead of bimonthly) also in two days.

One important task for the proper functioning of the computerized system was the correction of past accumulated errors. This project has proceeded as planned. The 1100 errors existing at the end of September, 1977, had been reduced to 116 by the end of November. Overall, the accuracy rate in this unit is up to 95%

The case control unit also produces bottleneck reports on cases which are failing to move at the desired rate. These reports are reviewed at the weekly management meeting

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and are used to target the next assignments. The resulting memos require investigators who are proceeding too slowly to produce either prompt and specific action or written explanations with projected timetables for future action.

IV. MORE EFFICIENT CASE PROCESSING:

Determined to improve the process by which the agency handled its case load, the Commissioners entered into a contract with Community Dispute Services of the American Arbitration Association. The project included a thorough review of the system presently used by MCAD, plus examination of systems used for similar purposes in other states. At the end of August, 1977, the Project Manager submitted a draft of the new Case Processing Guidelines to the Commissioners.

The draft was reviewed by numerous persons and groups including the MCAD staff, representatives of the Attorney General, the Massachusetts Bar Association, the Lawyers' Committee for Civil Rights, the Civil Liberties Union of Massachusetts and the Massachusetts Law Reform Institute. In December, 1977, the Commission held informal hearings on the draft Guidelines which were extremely productive.

While the draft was being rewritten, the A.A.A. gave the veteran MCAD staff extensive training geared to rapid case processing procedures. At the same time, the technique of a Fact-Finding Conference was put into practice as part

AMERICAN MEDICAL ASSOCIATION
PUBLISHED WEEKLY
CHICAGO, ILL., U.S.A.
1914

Subscription price, \$5.00 per annum in advance.

Single copies, 15 cents.
Entered as Second-Class Matter, May 2, 1882.
Postage paid at Chicago, Ill., May 2, 1882.
Acceptance for mailing at special rate of postage provided for in Act of October 3, 1917, authorized on July 1, 1918.
Postage paid at Chicago, Ill., July 1, 1918.
Postmaster: This journal is published weekly, except on Sundays and public holidays, and is sent by mail to subscribers at the rate of \$5.00 per annum in advance.
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Published by the American Medical Association, 535 North Dearborn Street, Chicago, Ill.
Entered as Second-Class Matter, May 2, 1882.
Postage paid at Chicago, Ill., May 2, 1882.
Acceptance for mailing at special rate of postage provided for in Act of October 3, 1917, authorized on July 1, 1918.
Postage paid at Chicago, Ill., July 1, 1918.
Postmaster: This journal is published weekly, except on Sundays and public holidays, and is sent by mail to subscribers at the rate of \$5.00 per annum in advance.
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of the announced trial period. A one-page check sheet was prepared by the supervisor to assist the investigators who conducted the conferences. In general, the reaction has been favorable enough for the supervisor to feel the new process is going in the right direction. The parties seem pleased with the results and as the staff gains experience, their cautious acceptance of new methods seems to be turning into enthusiasm.

The A.A.A. training program has proven to be very satisfactory for the entire MCAD staff. The investigators can use the new system and procedures efficiently. The effectiveness of attorneys and Commissioners has also increased markedly. The whole staff has been thoroughly acclimated to a two-pronged attack on complaints. First, where possible, everyone hopes to achieve voluntary settlement and thus, close the case. Second, if a voluntary settlement proves to be impossible, the staff is now well-prepared to move into public hearing and, where necessary, agency resolution and enforcement.

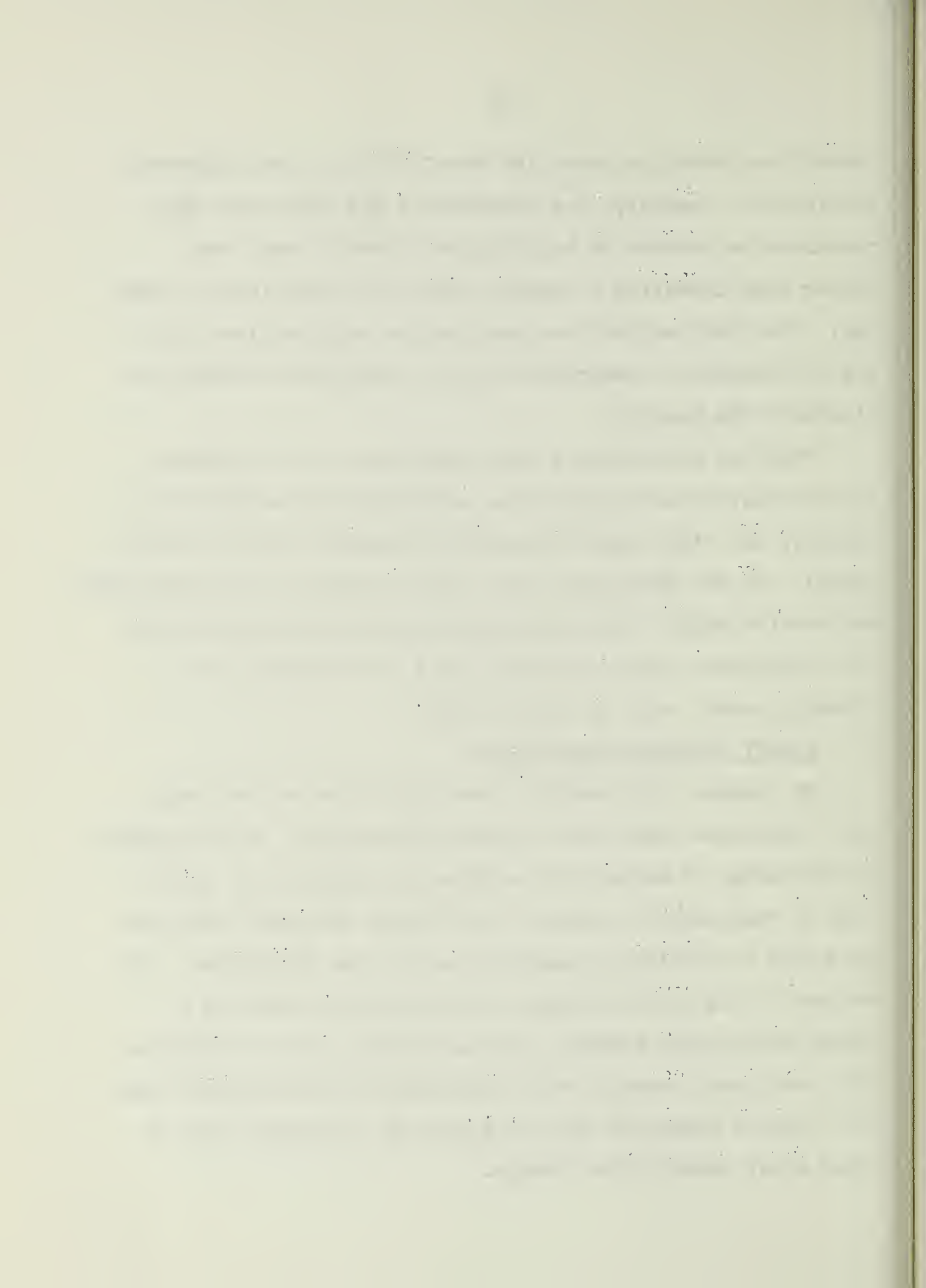
Aware of the sensitivity of proper timing, especially for full staff participation, the Commissioners made a policy decision to reject the implementation schedule proposed by the consultants. The consultants had estimated that the new Guidelines could be implemented by January 28, 1978. This, the Commissioners felt, would not allow sufficient time to

rework the Guidelines with the benefit of all the collected criticisms. Secondly, the consultants had urged that all resources be devoted to handling the current case load rather than investing a certain portion in handling the backlog. The MCAD decided that such action would violate both its philosophical commitment and its legislative mandate to eliminate the backlog.

When the re-write has been completed, and circulated, and interested parties given an opportunity to evaluate the results, the final case Processing Guidelines will be implemented. By the Spring of 1978, with the help of the experienced and devoted staff, the Commissioners believe that their goal of a ninety-day case processing limit for virtually all incoming cases will be within reach.

V. AGENCY INITIATED COMPLAINTS:

By statute, the Agency is not restricted to reviewing only complaints which come in from the outside. If the Agency has knowledge of apparent discriminatory behavior in violation of state and/or federal civil rights statutes, MCAD has the power to initiate a complaint on its own initiative. In the past, this power has been little used, and then on a rather small scale problem, such as Boston taxi cab drivers. This past year, however, the Commissioners have realized that this type of complaint can and should be a powerful tool to bring about constructive change.



As a first step, the MCAD identified ten of the worst offenders in the Commonwealth. The aim of this "Ten Most Wanted" list was to target objects for Commission initiated complaints. However, before embarking on a crusade against all ten at once, the Commissioners realized that an efficient and effective systemic approach required careful groundwork. Resources should be first surveyed, then additional resources located and collected, and finally they should be allocated thoughtfully.

Thus the year has been used to examine the resources available and to seek out ways to increase them. One productive if limited effort was the rationalization of the agency organization. Another effort was aimed at showing the legislators how an increase in the MCAD's budget would speed achievement of legislative objectives. Finally, and most potentially fruitful, is the continuing effort to obtain a substantial increase in federal funds. The effect of this year's activity has been to lay the groundwork to enable the Agency to move aggressively against offenders on the "Ten Most Wanted" list.

VI. THE YEAR IN STATISTICS

COMPARATIVE SUMMARY

March, 1976 - February, 1977

March, 1977 - February, 1978

A. New Complaints Received

<u>1976</u>		<u>1977</u>	
Quarter 1	457	Quarter 1	491
Quarter 2	507	Quarter 2	545
Quarter 3	375	Quarter 3	394
Quarter 4	396	Quarter 4	282
TOTAL	1735	TOTAL	1712

B. Complaints Closed

<u>1976</u>		<u>1977</u>	
Quarter 1	362	Quarter 1	645
Quarter 2	529	Quarter 2	602
Quarter 3	528	Quarter 3	769
Quarter 4	569	Quarter 4	456
TOTAL	1988	TOTAL	2472

C. Monetary Awards To Complainants

<u>1976</u>		<u>1977</u>	
Quarter 1	31,763.43	Quarter 1	83,632.46
Quarter 2	30,708.90	Quarter 2	49,010.07
Quarter 3	41,094.08	Quarter 3	28,236.75
Quarter 4	138,009.09	Quarter 4	34,894.37
TOTAL	241,575.50	TOTAL	195,773.65

The use of a computerized system has enabled the Agency to embark on a scientific management information system in place of the old system which was basically educated guess-work. Already it is possible to examine the case load and progress of each staff member weekly and to use this for individual assignments which results in the prioritization of the individual's workload. Further advantages are foreseen from the continued sophistication of the Rapid Charge Processing system, a project for which federal funds are being requested.

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VII. OTHER RELATED ACTIVITIES OF THE COMMISSION

In addition to its basic functions the Commission has been productive in other important areas.

1. Field Offices - Springfield, Worcester, New Bedford

The Springfield office has been clearly benefited by the regular presence of a Commissioner. The Worcester office is now fully staffed and moving efficiently. However, there is need for additional assistance at the New Bedford office. The Boston office has assigned one of its legal staff to New Bedford, but it is all this attorney and the resident staff can do to keep abreast of current cases. Thus, the New Bedford office may be generating still more backlog.

2. E.E.O.C. Federal Grant Program - 1978-1979

With the end of the '77-'78 grant and the marked increase in the MCAD performance, the Commission anticipated substantial increases. However, the Commission failed to allow for major changes at the top of both agencies and the effect of such changes on the grant negotiations. Thus, while the amount of the new grant will be almost double that of the old (\$127,000 in 1977 to \$244,000 in 1978) the Commissioners felt that the amount could have been more than three times the 1977 figure if this year's productivity had been accurately reported. Feeling that the inaccuracies had originated in the District Office of E.E.O.C., the three Commissioners travelled to Washington in an effort to correct

THE HISTORY OF THE

REIGN OF KING CHARLES THE FIRST

IN THE YEAR OF HIS REIGN 1625

BY JOHN BURNET

OF THE UNIVERSITY OF OXFORD

PRINTED BY J. STANLEY, AT THE SIGN OF THE

WINDMILL, IN ST. MARTIN'S LANE

1724

IN A SINGLE VOLUME

WITH A HISTORY OF THE

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the erroneous report. As a result of these efforts, the Commission hopes to reap an additional \$80,000 bringing the effective total of the re-negotiated grant to \$324,000.

In addition to this grant negotiation, reported plans to reduce the staffing of the local E.E.O.C. office are of great concern to the Commission. The E.E.O.C. refers many individual cases to the MCAD for processing. The result is an estimated one-to-one relationship between the number of E.E.O.C. personnel and the MCAD backlog. Thus, any reduction in local E.E.O.C. staff will require increased financial support from the Legislature to make it possible for MCAD to fulfill its legislative mandate to conquer the backlog problem.

3. Public Information

The Commissioners, functioning without a public information officer, are energetically trying to bring the methods and goals of the MCAD to public attention and acceptance. Some members of the media have been extremely cooperative. However, fearing to spread their efforts too thin, the Commissioners have been concentrating on meeting with relevant special interest groups such as the Complainant's bar and the Respondent's bar. The effects of this strategy have been promising.

1877
The following is a list of the names of the persons who have been elected to the office of Justice of the Peace for the year 1877. The names are given in alphabetical order of their surnames. The names of the persons who have been elected to the office of Justice of the Peace for the year 1877 are as follows: [illegible text]

There is a large number of persons who have been elected to the office of Justice of the Peace for the year 1877. The names of the persons who have been elected to the office of Justice of the Peace for the year 1877 are as follows: [illegible text]

Presumably as a result of the revigorated Commission activity which has received increasingly favorable press coverage there has been a large increase in requests for MCAD speakers. Therefore the Commissioners are re-activating the "Speakers Bureau" to be filled by staff volunteers. The Commission views the Bureau as a visible vehicle through which the public can be educated on MCAD law and which can help the Agency maintain a positive image with its constituents.

4. Federal/State Civil Rights Review

Implementation of the Civil Rights Review of federal and state grant applications intensified as the program was extended to increasing numbers of grants especially after September, 1977. Significant success was achieved in negotiating memoranda of agreement with or in receipt of affirmative action plans from over 40 cities and towns. The memoranda provide a formal contractual mechanism whereby the cities and towns agree with the Commission to the development of affirmative and remedial programs in the areas of employment, housing and contract compliance in construction.

Draft Affirmative Action Guidelines in both areas of employment and housing were printed and distributed to all 351 cities and towns in the Commonwealth as well as to a number of other entities. Commission staff began monitoring performance of various cities and towns under the memoranda

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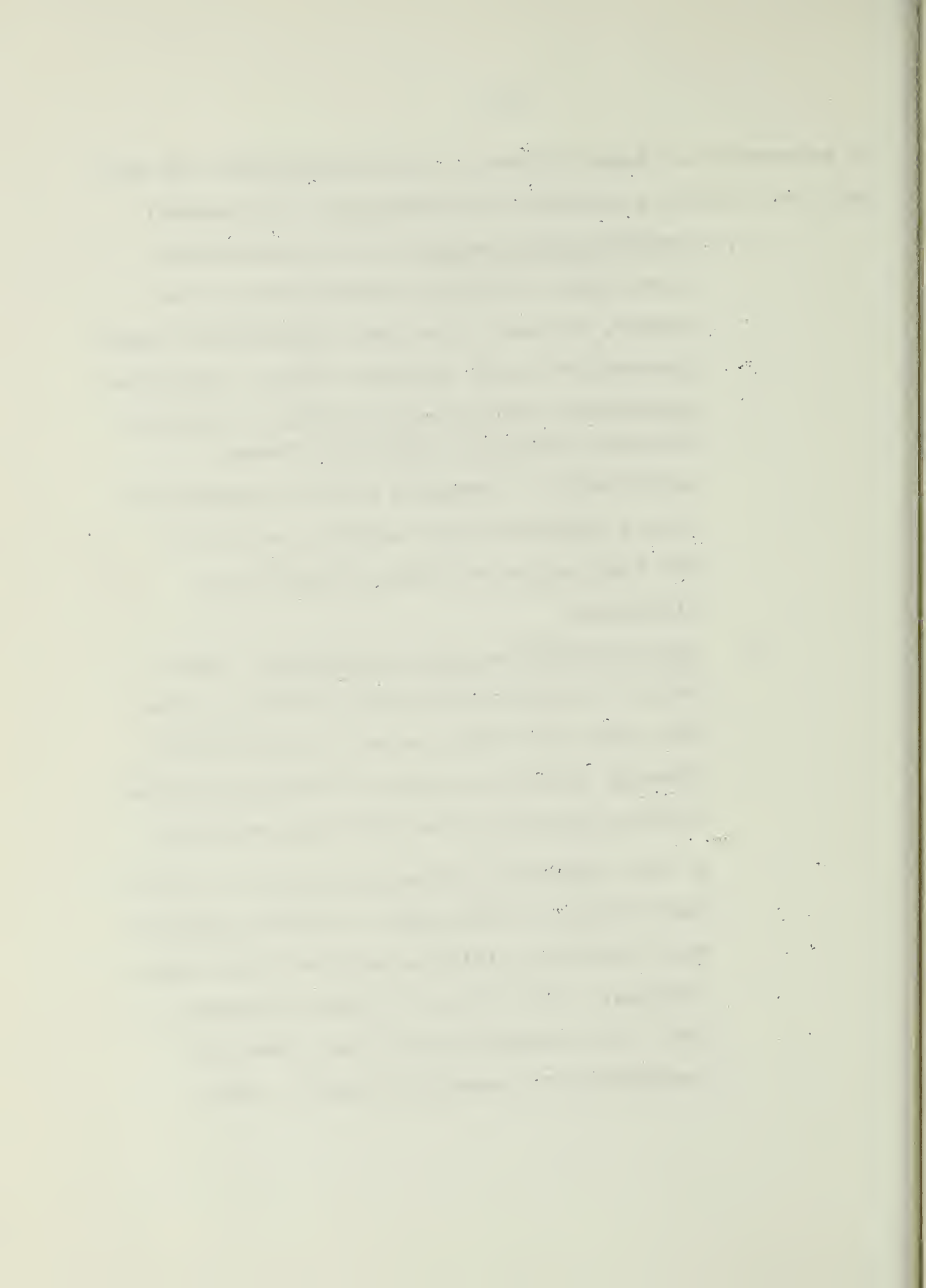
•

of agreements and began to work in close conjunction with the entities to achieve affective implementation. In Summary:

- a. Memoranda of Agreement- were reached with, among other cities and towns; Boston, Cambridge, Chelsea, Watertown, Springfield, Salem, Newburyport, Lynn, Lawrence, Malden, Brookline, Framingham, Marlborough, Fitchburg, Worcester, Holyoke, Haverhill, Arlington, Sharon.

Additionally, agreements have been negotiated with a number of other entities and are in the final stages of being processed for signatures.

- b. Draft Affirmative Action Guidelines - were mailed to the chief executive offices of the 351 cities and towns, as well as the area of planning councils and other interested parties. A public hearing on the guidelines was held at the Commission offices on January 12, 1978. Every effort has been made to obtain responses from individual cities as well as local organizations. With the aid of those responses, a final set of Guidelines has been drawn up. Promulgation is expected by June 1, 1978.



- c. Preliminary meetings - have been held with representatives from the "39" Community Development Block Grant "HUD" entitlement communities in conjunction with the joint session sponsored by the Department of Community Affairs and MCAD. At the all-day information session which was attended by nearly all of the entities, the Commissioners, assisted by the staff, provided detailed information on future requirements of the local entities.
- d. Work continued on Department of Community Affairs Affirmative Action Guidelines for local housing authorities. Although delays have occurred, a public hearing has been held and a redrafted version completed. The regulations should be promulgated in June, 1978. A major problem has been to find ways of involving smaller communities in regional housing plans which make specific commitments.
- e. Commissioners are meeting with members of the development cabinet in an effort to plan implementation of the state's Civil Rights Review of State Grant applications. This activity will be ongoing as the Commission develops systems to insure both an effective and efficient system for review of discretionary state funding programs.

- f. Commissioners met with the governor's Local Advisory Committee and representatives from the Mass. League of Cities and Towns. Every effort is being made to advise local entities of requirements long before specific grant applications are made and to provide them with input in the development of guidelines.
- g. As part of this program, the Commission and the State Director of Affirmative Action caused state agencies which are applicants for discretionary state assistance, to maintain standards equal to or greater than those required of local jurisdictions. As a result, redrafted affirmative action programs have been submitted to the State Director of Affirmative Action.

The Commission staff will continue to conduct the Civil Rights Reviews of Grant applications for conformity with federal and state equal opportunity requirements. Additionally, the Commission staff will continue to work with those communities which are charged with alleged Civil Rights violations to mediate the issues and to provide results which allow the cities and towns to continue to receive the federal ORS funding.

V. PUBLIC EMPLOYMENT COMPLAINT ACTIVITY

The two Field Investigators assigned to the division investigating complaints filed against public sector employers at the state, county and local level completed investigations of a total of 123 cases during 1977. The Division continued work on development of a rapid case processing system.

VI. CONTRACT COMPLIANCE

Work continued on the redraft of proposed public hearing guidelines for initiation of formal non-compliance proceedings against state contractors who are in apparent non-compliance. Meetings were conducted with the various state agencies in an effort to elicit responses to questions concerning the proposed hearing procedures and to insure conformity among all the agencies. Following hearings, a copy of the guidelines were submitted to the Secretary of State.

Additionally, continuing effort will be made to provide for re-evaluation of the current contract compliance system enforced throughout all state and state-assisted contracts. Areas under examination include the current numerical hiring goals as well as procedural changes in the contract specifications, which will provide for greater efficiency and eliminate duplicate reporting by contractors and/or state agencies. While reasonable success has been attained in the

program during the construction season, additional changes in the program must be initiated.

I. LEGAL DEPARTMENT

The past year has witnessed a significant evolution of the Legal Department's function. No longer responsible for case processing supervision, the lawyers are able to direct the bulk of their talents towards negotiating settlements and commencing an intensive attack on the public hearing backlog. Under the direction of the Acting General Council, a Senior Staff Attorney has been designated to supervise the attorneys in selecting, preparing, and trying of cases that previously had to lie dormant on the Commission's public hearing list because of the lawyers' case processing supervisory responsibilities.

In an effort to take full advantage of the powers statutorily conferred upon the Commission, specific lawyers have been assigned responsibility for swiftly initiating court actions to enforce Commission orders against recalcitrant respondents. Similarly, the Legal Department has sought and obtained court orders enforcing investigative subpoenas and enjoining the alienation of real property pending the disposition of alleged housing discrimination complaints. These activities have resulted in stepped up cooperation by persons dealing with the Commission's staff and, consequently, speedier resolution of complaints.

The Commission's historically unsatisfactory record on judicial review of its decisions has been sharply reversed in the last year. Among our recent successes has been the Supreme Judicial Court's affirmation of a Commission finding against the City of Springfield. The City had failed to promote the most qualified patrolman to the position of sergeant because of racial bias. Springfield Board of Police Commissioners V. M. C. A. D., S.F.C. No. 1285. The officer involved has been promoted to sergeant with all benefits, including salary, retroactive to 1971, the year he was unlawfully denied his promotion.

In LIFE Corporation v. M.C.A.D., Middlesex Superior No.75-4800, the Commission's decision that a highly qualified woman was unlawfully denied an executive position on the basis of her sex was upheld. The company opted not to appeal the confirmation to a higher court, but rather to comply with the Commission's order. The Legal Department will continue its efforts to defend the Commission's attack on unlawful discrimination at all levels of the employment spectrum.

Finally, the Legal Department, along with the entire Commission staff, hopefully, awaits the Supreme Judicial Court's determination in Massachusetts Electric Co. v. M.C.A.D., S.J.C. No. 1068. In this case, the Legal Department has zealously argued that Massachusetts law proscribes

as illegal sex discrimination the disparate treatment of pregnancy related disabilities by employers despite the United States Supreme Court's decision that such disparate treatment is not unlawful under the federal anti-sex discrimination in employment statute. The Commission will continue and expand on its mandate to represent the progressive attitudes of the Commonwealth's citizens and will not be dissuaded by less progressive tribunals in other parts of the nation.

The Legal Department is currently anticipating a significant increase in the amount of its EEOC grant. Resultant staff increases will enable the lawyers to implement a full scale assault on the widespread systemic discrimination plaguing minorities and women within the Commonwealth. As the efforts of those determined to exclude these groups from the enjoyment of equal opportunity become more sophisticated, this Commission becomes even more determined to meet this new challenge with the most competent and creative lawyering possible.

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5. The fifth part of the document outlines the various methods used to collect and analyze financial data, including the use of spreadsheets, databases, and specialized accounting software. It also discusses the importance of regular audits and the role of external auditors in verifying the accuracy of the financial statements.

6. The sixth part of the document focuses on the preparation and presentation of financial statements, including the balance sheet, income statement, and cash flow statement. It provides detailed instructions on how to format these statements and how to interpret the results.

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It is hereby declared
the public policy of the
Commonwealth that it is
necessary to protect and
safeguard the right and
opportunity of inhabitants
of this commonwealth to
obtain, hold and continue
in the unabridged enjoy-
ment and benefit of gain-
ful employment without
discrimination or abridge-

Statewide Advisory Board

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Myron S. Alexander, *Vice-Chairperson*, Manufacturer, Boston

- * John Andrade, Minority Recruiter, New Bedford
- Elsie Basque, Commissioner of Indian Affairs, Abington
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*Chairperson of regional advisory council

Regional Advisory Council Chairpersons

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Scoba F. Rhodes, Cape Cod Advisory Council
Elizabeth Metz, Fall River Advisory Council
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David Wharton, North Shore Advisory Council
John Andrade, New Bedford Advisory Council

On the Cover

The words on the cover are an excerpt from the law establishing what is now the Massachusetts Commission Against Discrimination (Massachusetts General Laws 1946, Ch. 368, Sec. 4).

1979 Report to the Commonwealth of Massachusetts

Edward J. King, Governor

Massachusetts Commission Against Discrimination

Commissioners
Jane Center Edmonds, Chairman
Alex Rodriguez
Samuel Stonefield

December 1979

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Contents

Discrimination: Legal and Illegal	2
Serving Individuals	4
Serving the Community	5
A Long History	6
Reorganization	8
The Complaint Process	14
The MCAD Today	17
Some Facts about the MCAD	22
The MCAD in 1979	23
Planning for the Future	25
If You Ever Need Us	27

“...to protect and safeguard...”

The MCAD and You

Some day *you* may need the MCAD—if you are looking for a job, a place to live, a loan, insurance, vocational training, or education. There is a strong possibility that you will encounter illegal discrimination at some point in your life, whether you are a woman, a man, married or single, black, white, or Hispanic, a parent with young children, a Catholic, Jew or Protestant, a labor union member, over 40, on public assistance or from different ethnic backgrounds.

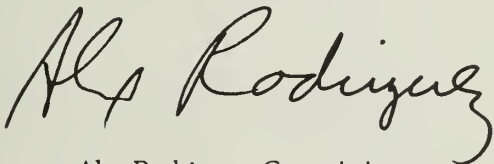
The MCAD serves *all* the people of the Commonwealth. Every person in Massachusetts is protected by federal law and by the Commonwealth's own anti-discrimination laws. The purpose of these laws is clear and their language is strong like the words on the cover and at the top of this page. The Massachusetts Commission Against Discrimination (MCAD) is the agency responsible for enforcing these laws, to ensure that you, your family, your friends, your neighbors—in fact, all the people in Massachusetts—are protected against illegal discrimination.

Some day *you* may need the MCAD—if you are an employer trying to comply with the latest in federal legislation, if you are a city or town official whose federal grants have been stalled because of your government's hiring practices, if you are a landlord who isn't sure how to interpret the anti-discrimination laws. The MCAD will give you the support and advice you need.

The MCAD is a strong agency with a solid record of accomplishments. We have detailed these accomplishments here so that if the need arises you will know that the MCAD is here to help you.



Jane C. Edmonds, *Commissioner*, Chairman



Alex Rodriguez, *Commissioner*



Samuel Stonefield, *Commissioner*

Discrimination: Legal and Illegal

Many kinds of discrimination are illegal. But it is important to understand that, even today, *some* kinds of discrimination under *some* kinds of circumstances are not prohibited by law. Only when we, the people of Massachusetts, through our state legislature decide that a particular practice is not only unfair, but something people in the Commonwealth should be protected against, is a law passed making that form of discrimination illegal. The kinds of discrimination that are illegal are defined precisely by law. The chart on the next page, although greatly simplified, will give you some idea of the *general areas* covered by our anti-discrimination laws.

The MCAD Fights Illegal Discrimination

The Massachusetts Commission Against Discrimination (MCAD) is the civil rights law enforcement agency for the Commonwealth of Massachusetts. Operating under a broad statutory mandate, the Commission is empowered to investigate and decide cases of discrimination in the areas of employment, housing, public accommodations, credit, services, and education. The Commission can receive and initiate complaints. It has strong investigatory powers and clear authority to require remedies where discrimination has been found to exist.

As a law enforcement agency, the MCAD's goal is full compliance with civil rights laws and regulations, and the Commission's efforts are also designed to achieve that goal. In addition to handling complaints, the Commission promulgates rules and regulations, and both monitors and assists businesses and government in their civil rights compliance efforts.

Major Areas in which Discrimination Is Illegal

Employment:

The Fair Practices Law protects the rights of Massachusetts workers to obtain and maintain employment free of discrimination. Coverage extends to advertising, hiring, discharge and all terms and conditions of employment.

Public and Private Housing:

It is illegal to discriminate in the sale, rental or leasing of property, houses or apartments and all related services such as advertising, showing of property, obtaining a mortgage, etc.

Public Accommodations:

No one may be denied services or access to any place, whether licensed or unlicensed, which solicits or accepts the patronage of the general public (hotels, restaurants, stores, transportation, hospitals, etc.). No distinction may be made on the basis of race, sex, physical or mental handicap, religious creed, or national origin.

Credit and Services:

People may not be denied credit because of their race, religion, sex, marital status, national origin, age, or status as a recipient of public assistance. Discrimination is also prohibited in advertising, approving a loan, and extending credit.

educational Institutions:

Massachusetts mandates equal educational opportunities for all of its citizens in any educational institution which accepts students or applications from the general public.

Protected Classifications

	Employment	Public Accommodations	Public and Multiple Dwelling	Other Covered Housing	General Education	Post-Graduate & Vocational Education	Financial Credit
Age	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Color	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Religion/Creed	Protected	Protected	Protected	Protected	Protected	Protected	Protected
National Origin	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Ancestry	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Sex	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Age	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Marital Status	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Persons with Children	Protected	Protected	Protected	Protected	Protected	Protected	Protected
General Handicap	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Sickness	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Deafness	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Welfare Recipients	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Veterans	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Members of Armed Services	Protected	Protected	Protected	Protected	Protected	Protected	Protected

 Protected

Important Note Some protected categories, such as age in employment (40-65), are limited. Call or write to the MCAD for further information

“Affirmative Action” means extra effort. It is required whenever the employment “profile” of a given employer does not approximate the population in the surrounding community. Through an affirmative action program, an employer attempts to correct this imbalance.

There are two general types of remedial measures that an employer may have to institute. The first type is preventive: identification of the sources of the discriminatory practices, (i.e. tests, job requirements, recruitment, etc.) and correction or elimination of those practices. If effective, these steps should prevent the problem from becoming worse in the future. However, preventive steps will not rectify the current problem. To correct the results of past discrimination, the employer must also take positive steps to increase the representation of underutilized groups (blacks, Hispanics, women, handicapped, etc.). This does not mean that unqualified minorities must be hired. It does mean that the employer must make an extra effort to locate potential employees, and may give qualified people who are likely victims of discrimination some extra consideration in filling open jobs.

The Commission carefully reviews affirmative action plans to assure that they are comprehensive, fair, and lawful.

What is “Affirmative Action”?

Serving Individuals

Over five thousand individuals come to the MCAD each year seeking information and assistance. Approximately two thousand people file complaints. The following are excerpts from actual complaints filed with the Commission.¹



"I was the only black salesperson employed by the company. A few days after I was hired the store manager complimented me on the job I was doing. Two weeks later I was told I was being laid off because 'business was bad.' But only a few days before, two new people, both white, were hired as sales people. And they weren't laid off."

Result: predetermination settlement with severance pay, June, 1979



"On April 12, 1979, I was told that my office would be closed and I would be terminated from my position as district manager in two weeks. I believe I was terminated because I am 63. I have been a district manager since 1957. When the company closed two other district offices this year, it found new positions for the two district managers. They are both under 40."

Result: predetermination settlement with financial compensation, May, 1979



"On April 17, 1979, I was fired from my cashier's position. During the eighteen months I had worked at the store, I had three different supervisors and had no difficulties with any of them. About a month ago a new supervisor came aboard, and the very first day I met him he told me I was fired. The only reason he gave was that I was 'not his kind of people.' I asked him if it was because of my religion and because I am a woman, and he said, 'Yes.' A customer standing nearby told me she heard the whole thing and would be a witness if needed."

Result: predetermination settlement with severance pay, June, 1979



"On December 18, 1978, I completed my application for renting the apartment and gave the real estate company a deposit. They turned down my application the next day because I have a child. I filed a complaint with MCAD the same day and on December 28th, the real estate company decided to rent me the apartment."

Result: predetermination settlement with rental of unit, December, 1978



¹As illustrated on p. 14, each complainant must make a formal written "complaint" statement of his or her problem. The excerpts on this page are taken directly from complaints in actual cases, occasionally edited very slightly to clarify meaning.

Serving the Community

Companies, local governments, institutions and organizations of many kinds wish to comply with state and federal anti-discrimination laws. This compliance is required as a condition of a federal grant or a contract received by city or town or a business. A record of compliance can be of critical importance when a federal grant or contract hangs in the balance. Also, for legal, moral and economic reasons, affirmative action programs and non-discriminatory policies and practices are initiated and adopted by organizations as part of their normal way of doing business.

The MCAD helps organizations through educational efforts and technical assistance. We also have the responsibility to issue complaints and negative reports when the laws are being violated. Here are some recent instances which illustrate our work with organizations:

The City of Pittsfield

The MCAD helped assure that the City of Pittsfield would continue to receive in excess of 15 million dollars in federal assistance by working through a Memorandum of Agreement which mandated changes in the city's employment practices. Pittsfield is one of over 100 cities and towns in the Commonwealth to have entered into such an agreement.

The City of Boston

In mid-1977 the City of Boston signed a Comprehensive Memorandum of Agreement with MCAD, which mandated specific affirmative remedies in the areas of housing, employment, and contract compliance. The Agreement required the city to establish an Office of Fair Housing, to ensure equal housing opportunity throughout the city; a compliance enforcement unit to monitor minority hiring on city construction projects and to assist minority business. In city employment, the affirmative action program has resulted in a net increase of over 460 minorities and 430 women employed by the City during the past three years. This record has been achieved with fewer than 300 persons being added to the total City payroll.

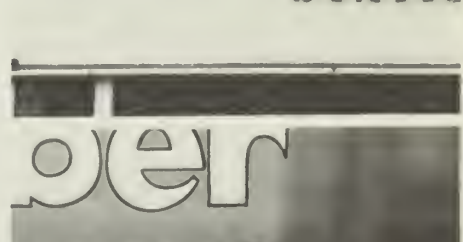
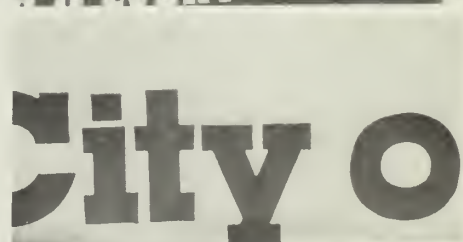
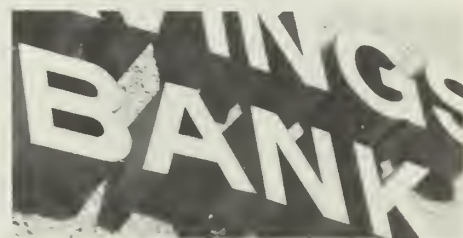
An increasingly effective rate of performance in each of these three areas is needed if the City of Boston is to continue to receive its share of federal grants.

New Bedford Employers

On May 16, 1979, the New Bedford Advisory Council and the New Bedford Area Chamber of Commerce organized a one-day seminar on discrimination law and affirmative action. The seminar was jointly sponsored by local civic and business organizations and was specially designed to meet the needs of personnel managers, educators, realtors, and bankers. Recent court decisions and legislative changes have increased both the need and the importance of the advisory councils' activities, and the conduct of these seminars across the state is consistent with the Commission's mission of providing technical assistance and information to private industry as a preventive measure against noncompliance with anti-discrimination laws.

Bar Associations

The Legal Division of the MCAD maintains a continuous public speaking program in order to update and clarify new laws and regulations for both attorneys and personnel administrators of employers subject to Massachusetts anti-discrimination laws. Among last year's activities were programs for the labor law sections of both the Massachusetts and Boston Bar Associations.



A Long History

More Than a Century Has Passed

Massachusetts has been a forerunner in the fight against discriminatory practices. More than a century has passed since the Commonwealth took its first step against discrimination. In 1855, six years before the Civil War, the General Court (the state legislature) passed a law to prohibit "any bias on account of race, color, or religious opinions of the applicant or scholar in the public school system."¹ Ten years later, the General Court enacted the first state law in the country that outlawed discrimination in public accommodations. In bold language the law states that:

*No distinction, discrimination or restriction on account of color or race shall be lawful in any licensed inn, in any public place of amusement, public conveyance or public meeting in this Commonwealth.*²

Employment: "No Irish Need Apply"

Although Massachusetts may have been one of the first states to prohibit discrimination in public education and public accommodations, discrimination in employment was not only legal but common practice in Massachusetts well into the twentieth century.

WANTED — A seamstress, thoroughly acquainted with the Wheeler & Wilson Sewing Machine, and competent to finish dresses. Brookline. Good recommendations as to character and capacity demanded. Positively no Irish need apply. Call at 724 Washington street, corner of Summer street.

at JY 21

—from the *Boston Daily Evening Transcript*, 1868.

"No Irish Need Apply" was as common in late 19th century employment advertisements as "Equal Opportunity Employer" is today. However at that time there was no law in Massachusetts to prevent it. Many first and second generation Americans were not hired simply because of their national origin or were denied access to better jobs. In spite of the laws passed since those times, discrimination still exists.

The First "MCAD": The Massachusetts Fair Employment Practice Commission

In 1944, a special committee of the state legislature was formed to investigate discrimination in employment in Massachusetts. Many Massachusetts legislators and their families had themselves experienced job discrimination as first generation Americans in the early years of the twentieth century. From personal experience they knew what it meant to be discriminated against. The Special Committee recommended this important law, which was passed in 1946 by the General Court:

¹Massachusetts Acts and Resolves, 1855, Ch. 256, Sec. 1.

²Massachusetts Statute 1865, Ch. 277; Laws of Massachusetts, 1864-65, at 650.

It is hereby declared the public policy of the Commonwealth that it is necessary to protect and safeguard the right and opportunity of inhabitants of this Commonwealth to obtain, hold and continue in the unabridged enjoyment and benefit of gainful employment without discrimination or abridgement because of race, religion, color, national origin or ancestry. It is likewise recognized that both justice and public interest demand a policy to give to persons of equal ability, regardless of race, religion, color, national origin or ancestry, fair and equal opportunity to obtain and to hold gainful employment, and for advancement therein.¹

It was also clear that an enforcement agency was needed. In establishing the Fair Employment Practices Commission, Massachusetts became the third state, preceded only by New York and New Jersey (1945), to create an agency to enforce civil rights legislation. The primary functions of the new agency were "to receive, investigate and pass upon complaints alleging discrimination in employment because of race, color, religious creed, national origin or ancestry."² The Commission was directed to "endeavor to eliminate the unlawful employment practice complained of, by conference, conciliation and persuasion."³ Offending employers were to be ordered to "cease and desist" and to take affirmative action in redressing their discriminatory acts. The name of the Commission was changed to the Massachusetts Commission Against Discrimination (MCAD) in 1950.

The MCAD in the 60s and 70s

Since 1946, the responsibilities of the MCAD have been greatly enlarged to cover not only discrimination in employment and public accommodations but also in housing, credit, and education. The categories of people that the MCAD serves now includes people between the ages of 18 and 65, women or men discriminated against because of their sex, handicapped people in public accommodations, persons with children in public and private housing, welfare recipients in housing, and pregnant women in employment benefits. These jurisdictional changes are the result of new laws and new court decisions in the field of civil rights, both at the federal and the state levels.

During this same period of expanding responsibilities, the MCAD's work load increased dramatically. In the eighteen years between November 1946 and December 1964, the MCAD processed 4,865 complaints of all types. In the seventies,⁴ the number of complaints has averaged about 700 a year—six times the average annual caseload of all the commission's first eighteen years. Also, in the early years of the Commission the complaints focused on discrimination against blacks. In the 70s, however, the nature of complaints broadened to include significant additional categories in greater numbers, reflecting the changing focus of anti-discrimination legislation.



GOV. FURCOLO has reappointed Mrs. Mildred H. Mahoney (above), of Winchester as chairman of the Massachusetts Commission Against Discrimination. She has been a commission member since 1946.

—from the Boston Sunday Advertiser, September 14, 1958.

Mildred H. Mahoney
First Commission Chairman
She served from 1946 to 1964.

¹ Massachusetts General Laws 1946, Ch. 368, Sec. 4.

² Id.

³ Id.

⁴ Based on 12,914 complaints filed 1971 through 1978.

Reorganization

"There shall be a commission. . ."

As a result of the major increases in jurisdiction and workload, it became apparent in the early 1970s that some major changes were necessary if the MCAD was to carry out effectively its broadened responsibilities. In particular, a major backlog of over 4,000 cases for only 26 field representatives to handle had built up, and it was clear that the direction of the Commission's activities would require full-time Commissioners (the MCAD had only part-time Commissioners during the first three decades of its existence).

In October, 1976, the legislature passed a bill reorganizing the agency Chapter 463, which begins "There shall be a Commission," provided for three full-time Commissioners and required the agency to improve its management practices and reduce "the present backlog of pending cases."



On March 7, 1977, after an extensive, statewide selection process, Jane C. Edmonds, Alex Rodriguez, and Samuel Stonefield were sworn in as the MCAD's first full-time Commissioners. Based on a review of past practices and current conditions, and assisted by a professional trained staff and numerous advisors from all segments of the community, the "Commissioners 3" implemented a series of important changes, emphasizing improved management accountability and aggressive enforcement activity.

New Management Techniques That Have Set the Standard

When the new commissioners took office the MCAD had a case inventory of over 4,000 cases and an average processing time of 18-24 months. Because of the legislative mandate and the clear importance of timely processing, the Commissioners implemented new procedures and introduced more effective management techniques. Within a year, dramatic changes had occurred, and the average time for processing a case had been reduced to four months.

The Commission also developed comprehensive guidelines and standard procedures for dealing with cases, to assure that cases are handled fairly, impartially, and expeditiously. The Commission also invested heavily in training the staff to use these procedures and guidelines effectively.

Efficiency has been given major emphasis at the MCAD since the reorganization, and it has paid off in dollars and cents as well as in better service delivery. The Equal Employment Opportunity Commission supports a significant proportion of MCAD employment cases, and has increased funding in accordance with MCAD's increased productivity.

The new management practices of the MCAD include regular evaluation of management processes and personnel performance. And by evaluation, the Commission does not mean to measure its efforts against global, immeasurable goals (e.g., "to improve the condition of humanity") but rather to identify specific, measureable goals which can be objectively evaluated, goals such as 90-day processing for investigative proceedings and 180-day processing through final agency proceedings.

Today the MCAD's management techniques are being used as a model for other states to use in improving their own practices, and they have drawn strong approval from the Governor.

"I am pleased to report that MCAD is demonstrating the gains to be reaped from the proper application of business methods. For example, MCAD's Civil Rights Review unit coordinates both the state and federal law so effectively that red tape has been eliminated. Communities consulting MCAD for aid and/or advice in local civil rights problems can benefit from what the MCAD calls 'one-stop service.' The long-range effect of this good management is to ensure that the Massachusetts taxpayer will continue to receive their fair share of federal funds."

Governor Edward J. King
June 21, 1979 speech in Worcester
to the Federal Regional Council

Major Accomplishments Since Reorganization

A Summary

- A total of \$1,256,759 in federal anti-discrimination dollars brought into Massachusetts. March 1977 to June 1979.
- A total of \$41 million dollars in federal grants saved for Massachusetts cities and towns. May 1977 through June 1979.
- Over 100 Massachusetts cities and towns have signed Memoranda of Agreement with the MCAD to assure their compliance with federal and state civil rights laws to continue their eligibility for federal funding. May 1977 through June 1979.
- Improved procedures for investigations were adopted. July 1978.
- A computerized case management system was introduced reducing the time it takes to find out the status of a case from a matter of days or hours to a matter of minutes. September 1977.
- New management practices reduced the case backlog by over 50%. October 1976 to present.
- New emphasis on preventing discrimination initiated, by offering seminars and technical assistance to employers to help them comply with the laws. March 1977 to present.
- Statewide Advisory Board of the MCAD and eleven regional Advisory Councils reactivated. March 1977.
- Since 1976, settlement rate up to 23% of total cases.
- Damage awards up to \$601,807 in 1979.
- Massachusetts Discrimination Law Reporter published.

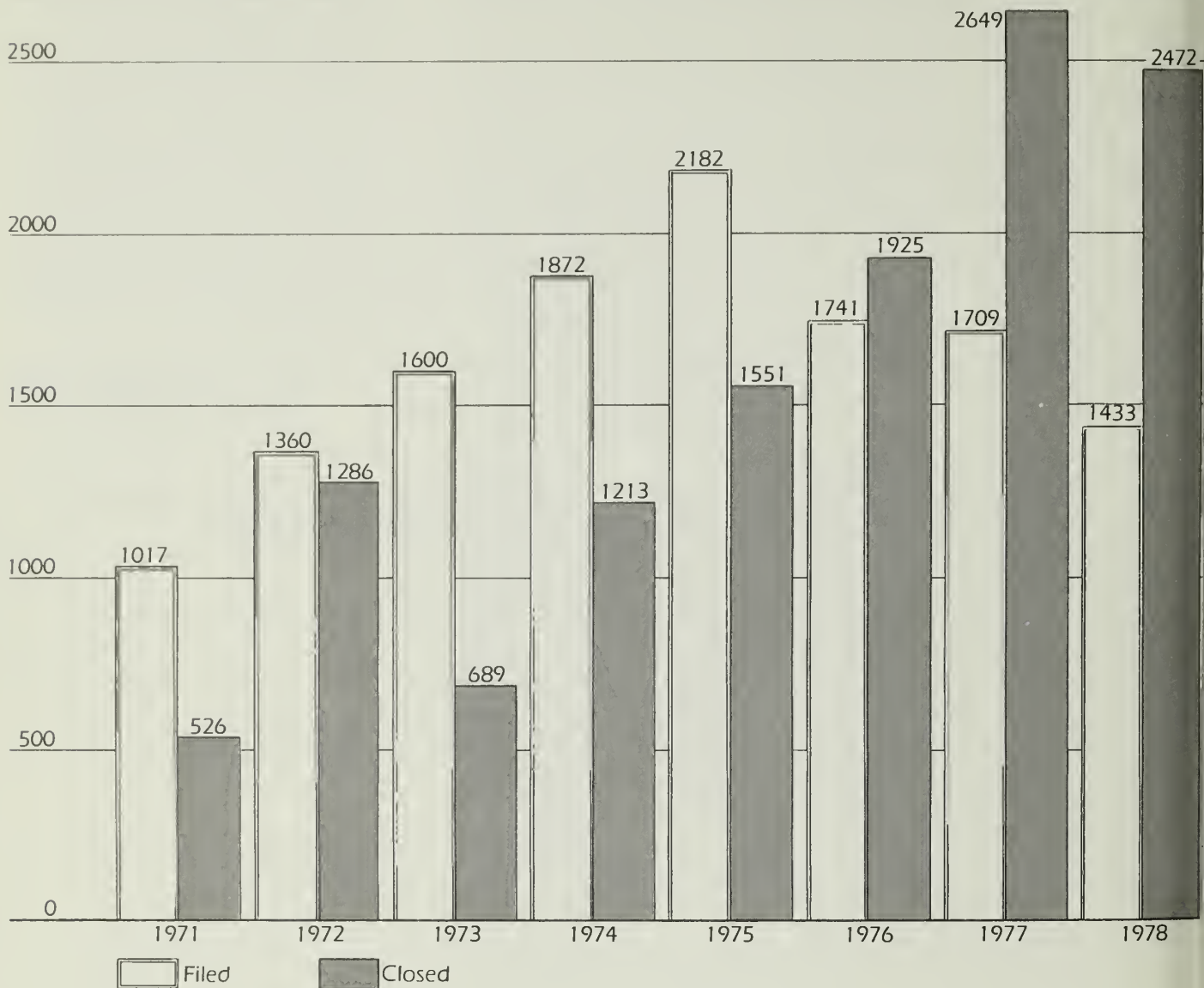
Reducing the Case Backlog

A major goal of the reorganization was to reduce the very large and growing backlog of unresolved cases. In 1971, the MCAD had 2035 open cases; by 1975 the number had risen to 4310. Since 1976, on the other hand, the new procedures have caused a steady decline in the case inventory: down to 3286 in 1977 and 2,237 by November of 1979.

Reducing the backlog has been made more difficult because there has been no sharp decline in the number of complaints. But since 1976, the number of cases closed each year has consistently been greater than the number of new complaints filed. By spring of 1980, the MCAD plans to enter a post-backlog era and to remain current with all active cases.

MCAD Complaints Filed and Closed

Calendar 1971 through 1978



The Case Management Process— How It Works

The management experts and the computer specialists for the Commission have come up with an efficient way of tracking a case through the system.

MCAD employees from the Commissioners themselves to the clerical staff keep daily records on their "MCAD Daily Activity Form." All the possible events that could take place while the MCAD is handling a case are listed on the form with a numerical code for each of the 70 possible events, such as "complaint filed" or "investigative plan done" or "hearing scheduled." Employees mark the code for the event they completed on their daily form.

The case management system allows ready access to case status information and gives Commission managers valuable information about how cases are handled. For example, a bottleneck report identifies stalled cases that have exceeded the time frame for a particular step in the process. With this information Commission managers can expedite these cases, evaluate the performance of Commission employees and assess the efficiency of their management methods.

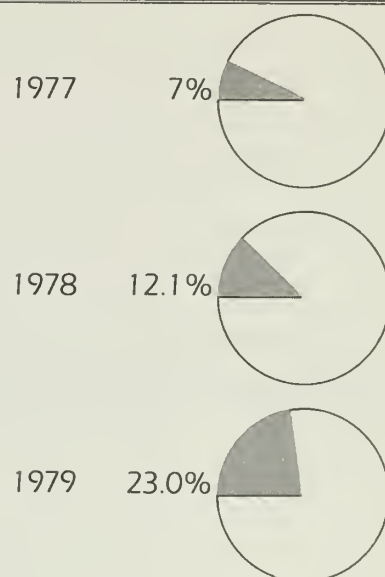
Emphasis on Voluntary Settlement

Both the original law and the reorganization legislation required the MCAD to attempt to obtain prompt, voluntary settlement of complaints. The Commission is pleased to report that there has been a steady upward trend in the percentage of cases reaching early resolution.

Cases Settled Before Determination

	Number of Predetermination Settlements	As a % of total cases
1977	186	7.0%
1978	303	12.1
1979	358	23.0

Predetermination Settlements (as % of total cases)



Expanded Sources of Funding

Since 1976 the MCAD has been aggressively seeking federal dollars. The Commission's funding from Massachusetts has increased minimally since 1975, but the Agency has been successful in its efforts to supplement state funding. With grants from the Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development, the Commission has been able to support new projects and ongoing activities.

MCAD Funding

FY	Total	State	Federal
1975	\$1,103,777	\$978,777	\$125,000
1976	916,175	731,175	185,000
1977	1,105,773	785,464	320,309
1978	1,039,384	795,464	244,920
1979	1,666,530	975,000	691,530

New Emphasis on Public Education

One of the benefits to the Commonwealth of having full-time commissioners is their availability to talk to local officials, and educational, business, and industrial leaders about compliance with anti-discrimination laws and ways of instituting affirmative action plans. The commissioners feel this educational work is of the utmost importance. By helping these leaders with their planning and encouraging them to make non-discrimination a basic ingredient in their decisions, the chances of preventing discrimination from occurring are greatly enhanced.

The Commissioners find many forums for making the public aware of what the MCAD does, why it exists, and how it can help. The three commissioners have appeared on numerous radio and television programs, and participate in educational programs with audiences as diverse as high school students, lawyers, bankers, nurses and college administrators.

In an effort to better reach its large target population, in January, 1979, the Commission reinstituted its use of television and radio. With the help and cooperation of television and radio stations across the state, public service announcements were broadcast in Spanish and English. These "spots," as they are commonly called, informed the public of its rights under the Commonwealth's anti-discrimination laws.

National Recognition

- The MCAD Management Information System is considered to be a model nationwide. Requests for information about it come from agencies and organizations across the United States. EEOC in Washington is training anti-discrimination agencies in other states to implement MIS systems like the one used at the MCAD.
- The Memorandum of Agreement process which was developed by the Civil Rights Review Unit has been accepted by the U.S. Department of the Interior as a determining factor in the award of land and water conservation grants.
- New in 1979, the MCAD's Massachusetts Discrimination Law Reporter gives Commission decisions a wider audience. The Reporter is published and distributed on a subscription basis by a private firm without expense to the MCAD; it is the first such state law reporter in the country.

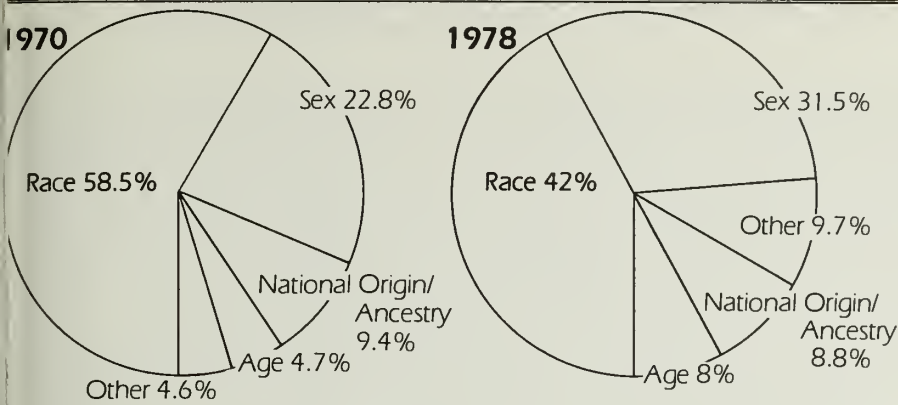
A Record of Major Federal Grant Awards

1977 — Management Information System Grant (EEOC)	\$71,559
1977 — Deferral Project (EEOC)	128,750
1977 — Civil Rights (A-95) Review Grant (HUD)	120,000
1978 — Deferral Project (EEOC)	244,920
1979 — Deferral Project Amendment (to 1978 contract)	72,540
1979 — Deferral Project (EEOC)	469,000
1979 — Administrative Hearing Project (EEOC)	149,990
Total federal grants March 1977, through June 1979	\$1,256,759

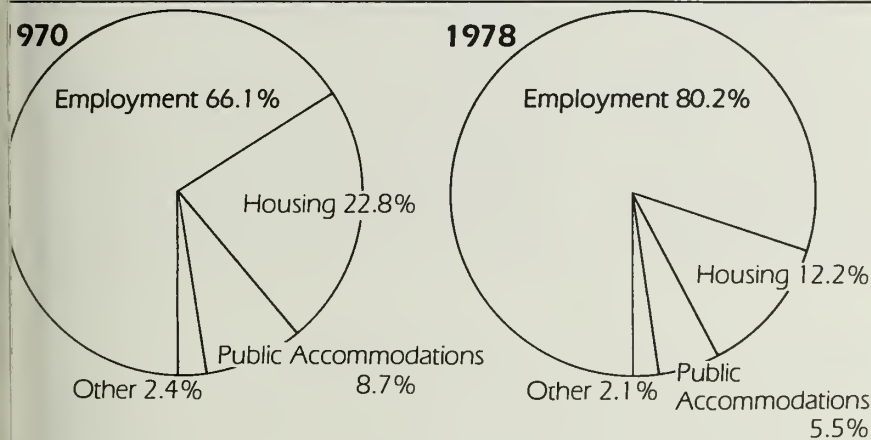
Focus on Employment

The composition of the complaints filed with the MCAD has changed substantially in recent years. Recent figures show that, compared to 1970, matters of race now make up about one-third of all complaints filed, compared to nearly three-fifths ten years ago. Another trend since 1970 has been the increasing number of complaints involving employment discrimination.

Discrimination Charged in Cases Filed with the MCAD



Areas of Discrimination in Cases Filed with the MCAD



New Laws to Enforce

The impact of civil rights legislation and court decisions of the 1960s and 1970s has made civil rights law enforcement much more complex. The trend has been towards expanding the classes of people, as well as the types of activities protected by the law. For example, only in 1964 did women begin to receive legal protection. Blind persons were added in 1972; people with arrest records in 1972; people with previous mental illness in 1973. Jurisdiction over credit was added in 1973.

The commissioners and their staff keep informed about new federal and state legislation and court decisions in the field of anti-discrimination, not only to assist the complainants in the new protected classes, but also to provide technical assistance to the employers, landlords, banks, universities, cities and towns trying to comply with the new legislation.

The Complaint Process

Four Things You Should Know About the MCAD Complaint Process

1. **Impartiality:** The MCAD is an impartial, objective investigating agency. We are not "for" or "against" anyone or any side. Our investigators are neutral and professional, and their decisions are based on facts and evidence. If and when a determination of probable cause is made, the Commission may provide, through the General Counsel, an attorney to conciliate and to present the case at a public hearing. The complainant may be represented by an attorney of his or her own choosing or by a Commission attorney.
2. **Timing:** Massachusetts Law requires that all investigations proceed promptly. Everyone benefits from a prompt decision; everyone loses by delay. To keep cases moving, we impose certain deadlines which must be observed.
3. **Settlements:** We encourage and actively work to achieve settlements. We want to help both parties achieve a voluntary resolution to the complaint whenever possible.
4. **Retaliation:** Massachusetts Law, M.G.L. Chapter 151B, Section 4(4), specifically prohibits any retaliation against any person who has filed a complaint, participated in any investigation or otherwise opposed allegedly discriminatory practices, and the MCAD strongly enforces this law. Any harassment or action adverse to the complainant or witnesses must be carefully and completely avoided.

The Case of "John Smith"

This case is not an actual one. It is designed to show all the possible steps in presenting a case. With the Commission's current emphasis on early resolution, few cases go through all these steps.

John Smith is 50. He felt that he had been fired from his job because of his age. He had seen articles about discrimination in the newspaper, and he thought that he might himself be a victim. Smith called the MCAD to find out how to file a complaint. He was asked to visit one of the Commission offices and to bring this information with him:

1. A list of names, titles, business addresses and telephone numbers of those charged with having committed an alleged unlawful discriminatory act, the names of witnesses if any, and any copies of disciplinary actions or termination notices he had received.
2. A summary of the specific acts of alleged unlawful discrimination, including dates.
3. The details of any financial losses suffered as a result of the alleged discriminatory act.

Intake

The next day, Smith arrived at the 1 Ashburton Place office of the MCAD with the above information in hand. An "intake" worker then discussed Smith's complaint with him.

Smith said that he had been fired from his sales job because of his age (50). The intake worker wrote down this list of facts:

1. I was employed by the Book Company as a salesperson in June, 1973.
2. In January of 1978 my supervisor asked me if I had considered a change of career. He suggested that I look into a management position with another firm. He said that I was getting to be "over the hill."
3. On April 10, 1979, I was asked by my supervisor to leave my position.

About being fired, Smith said:

I have been subjected to unequal terms and conditions of employment because of my age (50). I have never sold below my quota. At least two other employees were asked to resign after they had reached the age of 50. Therefore, I charge the Book Company with unlawful discrimination."

Investigation

Once the MCAD had determined that Smith's complaint was in their jurisdiction, a list of questions, called "interrogatories," was sent to Smith's employer (the respondent). The employer was asked to respond to the allegations in the complaint and state the reasons for firing Smith from his job and provide factual information on their employment practices and treatment of similar employees.

The interrogatories were analyzed and discussed with the complainant. At this stage if an investigator believes that there is a reasonable basis for settlement, a Settlement Conference would be convened. That didn't happen in this case. Also, at this stage, the investigator prepares an investigative plan, detailing the areas of further investigation, including witnesses and documents.

Fact-Finding Conference and Attempted Resolution

As the next step, a Fact-Finding Conference was scheduled. In addition to the complainant and respondent, the Commission specified other people who would be required to attend along with documents related to the case. At the Fact-Finding Conference, an impartial investigator asked Smith, his employer, and witnesses questions that she hoped would determine whether age caused Smith to lose his job. Although issues were clarified, no settlement could be achieved during the conference.

Based on the evidence submitted at the Fact-Finding Conference, the Investigator felt that a finding of Probable Cause could be recommended to the Commissioner who would be assigned to make a ruling on Smith's case. The evidence indicated that Smith had been fired only because his employer thought that a 50 year old man was too old to be a salesperson. Since no further investigation was necessary after the Fact-Finding Conference, the Commissioner was able to make a determination quickly. A Probable Cause Finding was made in Smith's case.

Another conciliation effort was made to find a solution acceptable to both Smith and his employer. But Smith wanted his job back, and his employer refused. Neither party was willing to compromise, and as a result the case was certified to public hearing.

Public Hearing

Smith's case was then presented at a Public Hearing before a Hearing Commissioner. The public hearing is a formal adjudicatory proceeding with both sides represented by counsel. The respondent was found to be guilty of age discrimination. Since age was *not* a bona fide occupational qualification reasonably necessary to the normal operation of the Book Company, the Company was ordered to reinstate Smith with back pay from April, 1979.

Commission Rules of Procedure require that the answers to interrogatories be submitted within 20 days.

23% of MCAD cases closed in 1979 were settled before discrimination on the merits (Probable Cause or No Probable Cause Finding).

"Probable Cause" means sufficient evidence to show a likelihood of success during further conciliation or as a public hearing.

If a Lack of Probable Cause Finding is made, the complainant has 10 days in which to appeal.

The complainant or respondent against whom a finding is made, has the right to appeal the decision to the full Commission and to the Supreme Court on the basis of the record established at the Commission proceedings.

What Does "Settling a Case" Mean?

The MCAD emphasizes the importance of settlement at every stage of the complaint process; the Commission is ready and willing to work with both parties to reach a mutually acceptable resolution, and will bring people together as soon as possible to discuss settlement terms. A settlement made prior to a Commission determination is not an admission of guilt or liability and results in a formal closing of the case.

A case can be settled when both the employer and the complainant (the person making the complaint) make an agreement which the Commission approves. A settlement may occur at any point in the case process and can be suggested to both parties by a representative of the MCAD or by one party to the other. A representative of the MCAD reviews settlements to see that they are fair.

One kind of settlement that occurs often is a cash settlement. In the case of an illegal dismissal from a job, the cash settlement may constitute severance pay. In the case of unequal pay for equal work, the settlement could result in a retroactive pay raise. From July 1, 1978, through June 30, 1979, complainants at the MCAD received \$601,807 in damages.

Another kind of settlement involves the job itself with the complainant receiving the job or promotion which was originally denied.

Predetermination Settlements

These are some examples of cases recently settled with the assistance of MCAD staff.

"In November 1978, I was hired as the only woman on a four person research team. I am being paid \$12,500 a year. A man hired five months before me performing the same job as I am is receiving \$2,000 per year more than I am. My qualifications at the time I was hired were superior to his at the time he was hired."

Result: settled with back pay and salary adjustment, March, 1979

"I am a woman who was a candidate for a product coordinator position. The Manager of Industrial Relations had personally selected me as a likely candidate and submitted my name and qualifications to the Manager of the Department. The interview went well, and I was encouraged. After much evasion and delay I was told a man from outside the company had been hired. People told me that the department manager would only hire a man for a position like that."

Result: settled with appointment to equivalent position, June, 1979

"On January 29, 1979, I was denied a drafting position with an engineering corporation. I believe I was denied this position because I am black. I was told a grade point average of 3.0 or better was all that was needed for the job. My average is 3.64, and the white person hired for the job had a grade average below 3.0 in the same program."

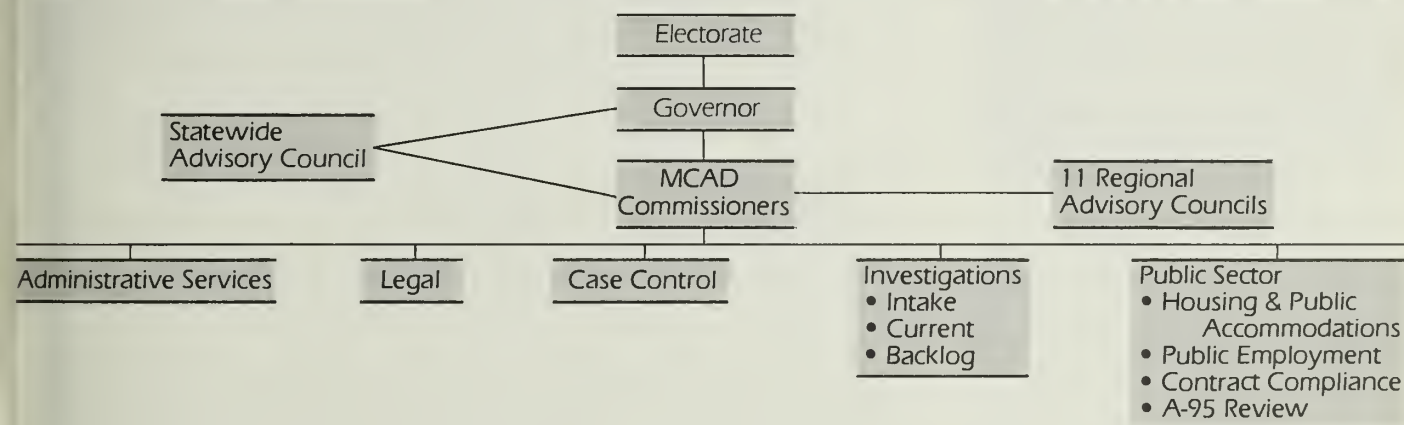
Result: settled with lump sum settlement, June, 1979

The MCAD Today

Today, the Massachusetts Commission Against Discrimination is an agency with proven procedures, a dedicated professional staff, active advisory boards, and a solid source of funding. In the current fiscal year FY/79) the Commonwealth appropriated \$975,000 for the operation of the Commission's four offices. Those offices, located in Boston, Springfield, Worcester and New Bedford, are staffed by 57 state-funded employees plus an average of 10-15 student interns and volunteers.

The chart shows the organization and relationships of the MCAD, its advisory boards, and five divisions.

MCAD Organization



The MCAD Commissioners

The Commission itself is composed of three full-time commissioners appointed by the Governor. They serve 3-year staggered terms to maintain continuity in policy and direction of the agency. Each of the commissioners has a geographic responsibility for a particular portion of the state, as prescribed by the 1976 reorganization legislation. As a group, they decide matters of basic policy and guide the operation of the agency.

When she was appointed, Chairman Edmonds seized the unique opportunity offered by the reorganization and under her direction the team management approach was begun. She recognized that if the commissioners worked together as a team, they could increase their effectiveness both inside and outside of the agency.

For the first and possibly last time three full-time commissioners were appointed at once. The new commissioners had complementary interests and abilities, but each focused on a special area of particular interest and expertise.

Commission Chairman Edmonds, a graduate of Radcliffe College and Boston College Law School, in addition to performing the functions of an Investigating and Hearing Commissioner, as might be expected, concentrates her efforts heavily in the general administration of the Commission's programs.

As a former elected official, Mrs. Edmonds has maintained a major involvement in the MCAD's civil rights review program which entails the negotiation of Memoranda of Agreement with local elected officials for the





purpose of the development and implementation of affirmative action programs as a means of ensuring eligibility for federal funding. The Chairman's political experience has served her well during sensitive negotiating sessions. Mrs. Edmonds is the principal spokesperson for the Commission and is generally responsible for MCAD activities in the Greater Boston area.

Commissioner Stonefield, a graduate of Dartmouth College and Harvard Law School, is an attorney from Springfield, Massachusetts. He is responsible for the Western Massachusetts activities both in case processing and civil rights reviews, and also oversees the legal and legislative work of the Commission.

Commissioner Rodriguez, a graduate of Goddard College and a former Loeb Fellow at Harvard University, has a business management background and has focused his attention on the development of the MCAD's case processing and management information systems. He is responsible for the Commission's activities in Southeastern Massachusetts and has also led the Commission's policy development program.



Advisors Across the State

The MCAD now has a strong network of advisors in regional councils across the entire Commonwealth. There also is a Statewide Advisory Board which coordinates the activities of the regional councils, reviews the implementation of the Commission's programs and policies, and advises both the Commission and the Governor of the Commonwealth on matters of policy affecting the Commission. The Board is appointed by the Governor and represents the regional councils and interest groups affected by Commission actions. Board members serve without compensation. Current members are listed inside the front cover.

There are regional advisory councils based in: Boston, Fall River, Fitchburg, Lawrence, Lynn, New Bedford, North Dartmouth, North Weymouth, Pittsfield, Springfield, Worcester.



The eleven regional Advisory Councils include representatives of owners and brokers of residential property; major lending and credit institutions; major private employers; a local personnel or civil service administrator; local post-secondary educational institutions; local labor organizations; minority racial, ethnic and linguistic groups; women; elderly and handicapped persons; and recipients of public assistance. These councils advise the Commission on matters of public policy, inform the Commission on local discrimination problems, and conduct seminars in their communities for employers, lawyers, realtors, bankers, etc. Another example of community and advisory council working together is the volunteer office in Pittsfield where the local C.A.P. office, Action for Opportunity, takes complaints, types them up and sends them to the Springfield Office of MCAD to be processed and investigated.

MCAD Divisions

The MCAD has five major divisions, each with its own manager: Case Control, Legal, Investigative, and Public Sector, and Administrative Services Division. The division heads make up the Commission's internal management task force. They meet together regularly both as a group and with the commissioners to participate in administrative and policy development decisions.

Case Control Division

Established in 1977, the Case Control Division is the planning and monitoring arm of the MCAD and is responsible for providing monthly and weekly information and recommendations concerning management of the agency's case load. Under the direction of MCAD's Deputy Director of Administration, Case Control is in charge of the computerized case tracking and management information system (MIS). By centralizing case information, the MIS has reduced the length of time to respond to case status inquiries from hours or days to minutes. The MIS breaks down the MCAD case operation into over 70 measurable transactions, which enables the Case Control staff to identify bottlenecks in the case processing procedure. As a result, the MCAD is better able to monitor its own performance. Monthly reports detailing case intake and progress in case processing are circulated by the Case Control Division as a continuing progress report. Currently the Case Control Division is using the output of the MIS to identify additional ways to increase the efficiency of case management.



Terrence P. Morris, *Director*
Case Control Division

Legal Division

The Legal Division serves as in-house counsel to the Commission. The duties of the General Counsel and staff attorneys are varied and include advising investigators on complex investigations, reviewing investigative recommendations to the commissioners, attempting conciliation after a Probable Cause finding, and litigating where conciliation fails. Commission attorneys also represent the Commission in all state and federal courts.

The Legal Division is proud of its record. The Supreme Judicial Court sustained all three Commission decisions presented by the Legal Division in 1978. Significant among these was the Supreme Judicial Court's concurrence with the Commission's position that pregnancy-related disabilities must be treated similarly to all other temporary disabilities. Congress has since adopted the same view.

In 1979, the Legal Division received a special federal grant to help eliminate the backlog of cases waiting for public hearing. Another innovation is the publication of all Commission decisions in an official *Massachusetts Discrimination Law Reporter*. The Commission is the only anti-discrimination agency to have such a reporter. It is prepared, published and distributed without any expense to the Commission.



Jeffrey J. Binder, *Director*
Legal Division

Administrative Services Division

The Administrative Services Division is responsible for providing administrative support for the Commission's operational divisions, including personnel, budget and general office management. Support services are also provided to the State Advisory Board and the eleven regional advisory councils.

Public information is also a responsibility of this division and, in keeping with the Commission's commitment to public education, maintains a speakers' bureau, schedules television, radio and other public speaking engagements for the commissioners and staff, and arranges for radio and television public service announcements.



Virginia W. Parks, *Director*
Administrative Services Division



John A. Ramos, *Director*
Division of Investigations

Division of Investigations

The Division responds to complaints of unlawful discrimination in private sector employment and education. It also has investigators in the regional offices in Worcester, Springfield, and New Bedford. The investigative staff works in three units:

- The **Intake Unit** meets with people who want to file complaints and draws up a complaint if one is appropriate. In employment cases, this unit initiates the investigation by sending interrogatories to the employer.
- The **Current Unit** investigates recently filed private sector cases, referring them to the Legal Division for conciliation following a finding of Probable Cause.
- The **Backlog Unit** works from the older cases still on file, from the oldest towards the present. It is the responsibility of this unit to continue to implement the legislative mandate to continue to reduce the backlog in the Commission's case inventory.

In 1978 the Division developed the first comprehensive Investigative Guidelines to assist in maintaining standard investigative procedures. In addition, the Investigative staff has had formal training in investigative and settlement techniques. Although it is achieving its goal of eliminating case backlog, the Investigative Division has continued to keep current with MCAD's incoming cases.

The EEOC Agreement

Some of the Commonwealth's employment discrimination laws are similar to the Title VII of the 1964 federal Civil Rights Act. The Equal Employment Opportunity Commission (EEOC), the agency charged with enforcing federal civil rights, is the federal equivalent of the MCAD. People who want to file a complaint against an employer are entitled to file at both the MCAD and the EEOC.

To avoid duplication when cases are investigated, the EEOC and the MCAD annually enter into an agreement to allocate the responsibility for all complaints filed in Massachusetts. Complaints filed with MCAD are automatically filed with the EEOC and vice versa, with the use of joint intake forms to save time and effort. Thus a complainant's rights under both state and federal law are preserved. The workload of Massachusetts cases is divided between MCAD and EEOC, and the Commission is reimbursed by EEOC for successfully completed investigations.

Public Sector Division

Among the duties of the Public Sector Division is the obligation to investigate all public sector employment, housing, credit and public accommodation complaints. But it is also a discrimination *prevention* arm of the MCAD. By working with local officials in cities and towns to meet equal opportunity requirements in housing, employment, and contract compliance, the Division both prevents possible future discrimination complaints and supports the communities in their requests for federal and state funds.

The Division has four special function operating units:

- The **Housing and Public Accommodations Unit** handles complaints of discrimination in housing, public accommodations and credit.
- The **Public Employment Unit** handles employment discrimination in cases where the employer is either a state agency, a county, or one of the cities and towns in the Commonwealth.
- The **Contract Compliance Unit** makes sure that contractors who have construction contracts with state agencies adhere to the requisite affir-



Roger C. MacLeod, *Director*
Public Sector Division

mative action requirements in the contracts. The unit provides technical assistance to cities and towns instituting contract compliance proceedings.

- **The Civil Rights Review Unit's** principal function is to enforce civil rights compliance within Massachusetts cities and towns in the areas of employment and housing and contract compliance. The Review Unit does not receive complaints; it tries to identify and resolve issues before they are litigated by working directly with cities and towns. Federal grant program requirements stipulate that cities and towns seeking federal and state money prove that they are in compliance with federal anti-discrimination laws. The review requirements are stated in a federal "A-95" regulation.

The Review Unit gives cities and towns what one commissioner calls "one-stop service," helping a municipality develop and implement fair housing and equal employment plans and signing Memoranda of Agreement which commit cities and towns to develop plans to address identified areas of noncompliance.

The Review Unit has gone to bat for Massachusetts cities and towns to help them qualify for federal money when they have a proven record of attempting to provide equal opportunity in employment, housing, etc. For example, the Review Unit helped save a \$15 million HUD grant to Pittsfield. Recently the Unit has been working with Lawrence to help it requalify for a \$7 million grant it lost for failure to comply with federal law.

Some Facts About the MCAD

- The Commonwealth's civil rights law enforcement agency
- Established by the General Court in 1946 (name changed to MCAD in 1950)
- Major reorganization in 1976
- Principal functions
 1. to enforce state and federal civil rights laws
 2. to educate to forestall potential discriminatory behavior
 3. to assist individuals whose rights have been violated
 4. to aid employers, government agencies, and others in complying with the laws
- State funding for FY 1979: \$975,000
- Federal funding for FY 1979: \$691,530
- Over 5,000 individuals seek information and assistance from the MCAD each year
- 3 full-time Commissioners appointed by the Governor, having 3-year staggered terms
- Commissioners have the power to: subpoena records, award damages, render final decisions
- 73 employees (57 state funded, 16 federally supported)
- Computer-based management information system
- State-wide Advisory Board of 30 members
- 11 regional advisory councils totaling 347 members from business, government, institutions, and independent citizens
- MCAD offices in Boston, Worcester, Springfield, and New Bedford
- Speakers' Bureau available for organizations
- An agency of the Secretariat of Administration and Finance

The MCAD in 1979

Highlights

The 1979 fiscal year which ended in June was a particularly eventful one for the MCAD. These are some of the highlights:

New Responsibility

As a result of the Commissioners' and constituents' active support for two consecutive years, Section 92A and Section 98 of Chapter 272 of the Massachusetts General Laws (Public Accommodations) were amended to include persons with physical or mental disabilities. The new amendments are effective January 1, 1980.

Policy Changes

MCAD, pursuant to its legal powers under the Governor's Code of Fair Practices (Executive Order 74, as amended by 116) is aggressively working to strengthen affirmative action in state government, including the Executive and Judicial branches. The Commission's goal is simple: equal access and equal opportunity under the law.

New Programs

The three Commissioners share the belief that "...justice delayed is justice denied." To this end the Commission has implemented a rapid charge processing system to assure prompt resolution of all cases. In addition, the Commission now conducts investigative fact-finding conferences soon after a complaint is filed at the Commission. As a result of both programs the average case is resolved within a 90-day period.

Grants and Awards

In addition to a significant increase in its annual deferral grant from the U.S. Equal Employment Opportunity Commission, the Massachusetts Commission Against Discrimination was awarded a special agency improvement grant of \$149,990 from the Equal Employment Opportunity Commission. This grant, the first of its kind received by any state fair employment practice agency, has enabled the Massachusetts Commission Against Discrimination to reduce most of its public hearing backlog and expedite its decision writing program and improve the quality of its administrative decisions.

Significant Litigation or Decisions

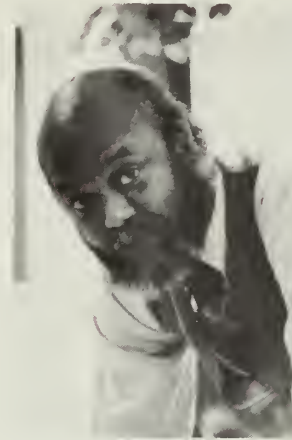
Over the past year the Massachusetts Commission Against Discrimination has seen a significant acceleration both in the volume and success of its litigation. Highlights include the Supreme Judicial Court's affirming all three Commission decisions presented on appeal, including several landmark decisions concerning pregnancy disabilities.

Early Settlement Progress

23.0% of all cases closed during Fiscal Year 1979 were settled before a determination on the merits. This rate has more than doubled since the present Commission was sworn into office.

New Memoranda of Agreement

An additional 41 Agreements, signed during the 78-79 year, brings to more than one hundred the number of Massachusetts communities that are actively developing affirmative action programs in housing, employment and contract compliance. Use of Memoranda of Agreement, under the Commission's civil rights review program, demonstrates the Commission's





commitment to "one stop service," i.e., the elimination of duplication of effort by federal, state and local governments.

Public Education

In the past fiscal year the Commission has accelerated its public education program by means of a Speakers' Bureau, jointly sponsored conferences with its regional advisory councils, and greatly increased use of television and radio public service announcements. Informational "spots" were broadcast statewide in several languages.

Organizational Change

The Housing Unit was transferred to the Public Sector Division in order to assure effective coordination of housing complaint investigations and the development of fair housing programs by the cities and towns.

New Management Techniques

As part of the MCAD's reorganization, five divisions were created, each headed by a manager. These five managers comprise the Management Task Force and as such, have functioned as an integral unit with primary responsibility for planning, developing and implementing Commission policies and programs.

Special Recognition

The Commission and its three Commissioners have been honored for their efforts in many areas during the last few years such as: the American Arbitration Association's annual award of recognition to each of the Commissioners; the EEOC's citation by Eleanor Holmes Norton, Chair, recognizing MCAD for its outstanding case processing system.

A New Training Program

The Legal Division and the Division of Investigations began a monthly in-house training program to discuss new developments and procedures. Topics included, but were not limited to: sexual harrassment, criminal records, mental illness, Supreme Judicial Court decisions, religious discrimination and legislation for the handicapped.

The MCAD in Fiscal Year 1979

Case inventory at beginning of year	2,465
New complaints filed during year	1,768
Cases closed during year	2,220
Case inventory at end of year	2,013
Percentage of pre-determination settlements	23.0%
Monetary awards to complainants	\$601,807
New compliance agreements	41
Speaking engagements and training sessions	100 +
Meetings of Statewide Advisory Board	6
Total meetings of Regional Advisory Councils	130
Funding	
Commonwealth of Massachusetts	\$975,000
U.S. Equal Employment Opportunity Commission, 1979 Case Processing Contract	469,000
U.S. Equal Employment Opportunity Commission, 1978 (extension) Case Processing Contract	72,540
U.S. Equal Employment Opportunity Commission Administrative Hearings Contract	149,990
Total	\$1,666,530

Planning for the Future

In the Year Ahead

Primary Commission goals for 1980 involve the fine tuning of processes already begun. We plan to:

- better utilize data from the Management Information System and fully computerize all non-employment cases
- further reduce case processing time
- plan and carry out more public information activities, including informational brochures and an audio/visual presentation
- increase enforcement of both individual and systemic housing complaints
- conduct a series of seminars: one each for banks, institutions of higher education, minority business enterprises and for civil rights advocacy groups, on how to assist the MCAD in achieving common goals
- assist in establishing, with federal, state and local agencies, a Metropolitan Fair Housing Agency for the Boston region

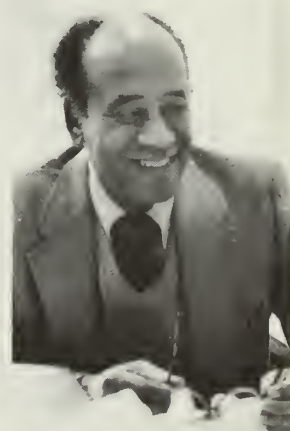
Future Directions—the MCAD in the 1980s

It's not an easy task to look ahead and predict the direction of the agency in the future. Surely, no MCAD Commissioner of the 1950s and early 60s could have anticipated the rapid expansion of jurisdiction and the explosion of complaints that occurred in the late 60s and 70s. But some trends are emerging for the 80s:

• **More New Legislation**—While there will not be the surge of new legislation of the last two decades, the jurisdiction and the responsibilities of equal opportunity agencies like the MCAD will continue to expand. For example, since the end of FY 1979 the federal age limits for age discrimination in employment have been raised to include people up to age 70. A similar amendment to state law is likely to follow. Also, the civil rights of disabled persons will likely be recognized in law. As a result of these broadened areas of jurisdiction, employers will require the MCAD to take a more active role in providing training and technical assistance to help both public and private employers to comply with the new laws and to increase its enforcement efforts against parties that do not comply.

• **New HUD/MCAD Memorandum of Agreement**—A Memorandum of Agreement between the U.S. Department of Housing and Urban Development and MCAD will be implemented, providing a system for the dual filing and processing of housing contracts. The Commission anticipates successful negotiation of a contract with HUD for over \$140,000 to implement the terms of the Memorandum of Agreement.

• **A More Aggressive "Carrot and Stick" Approach by the Federal Government**—As the federal government responds to complex economic conditions, it will pay a great deal more attention to how its money is spent. In the past, equal opportunity issues have been secondary considerations in the grant award process. The enforcement of equal opportunity conditions, demonstrated by the federal government in the past two years, is expected to become more stringent.





The federal government will increasingly withhold discretionary grants from cities and towns, or withhold contracts from private employers, because of civil rights noncompliance. In Massachusetts this has already happened to Dedham, Stoughton and other communities.

Community groups have become more aggressive in suing the federal government for providing financial support to grant applicants who are not in full and effective compliance with civil rights requirements. For example, the U.S. Department of Housing and Urban Development has been sued for awarding CDBG and UDAG monies to Boston and Chelsea; these actions were initiated by advocacy groups. Actions like these are likely to continue to multiply.

In such an atmosphere, the MCAD will continue to take a stronger role in ensuring full compliance with equal opportunity requirements, thus providing greater protection for governments against the loss of federal funds while at the same time ensuring equal opportunity for all people.

This can only be done by convincing policy makers to incorporate anti-discrimination and affirmative action concepts into their way of thinking. Civil rights cannot be an afterthought which policy makers subscribe to under pressure of a law suit. It must become a part of how they do business. The MCAD can help that happen.



- **Government Accountability—the issue of the 80s**—All levels of government are going to be increasingly required to account for the money they spend and the results they achieve. This demand is coming from the public, from legislative bodies and from funding agencies. Public sector innovations like the MCAD's Management Information System will have to become the way government agencies do business in the 1980s. It is no longer enough for a government agency to do good works or have good intentions. It must perform efficiently and be able to demonstrate that it does.

We at the MCAD have had considerable experience, and can share what we have learned with other parts of government. Government can be made to run in an efficient and cost-effective manner. We will continue to try to improve our own record and at the same time do whatever we can to help other agencies.



The decade of the 80s will be a most important one for the people of Massachusetts and for us at the MCAD. Large numbers of people in the Commonwealth will make some of the most important changes of their lives—getting a new job or promotion, finding a house or apartment, obtaining an education, taking out a loan, retiring. The choices they are able to make will affect their whole lives and also affect the vitality of the Commonwealth.

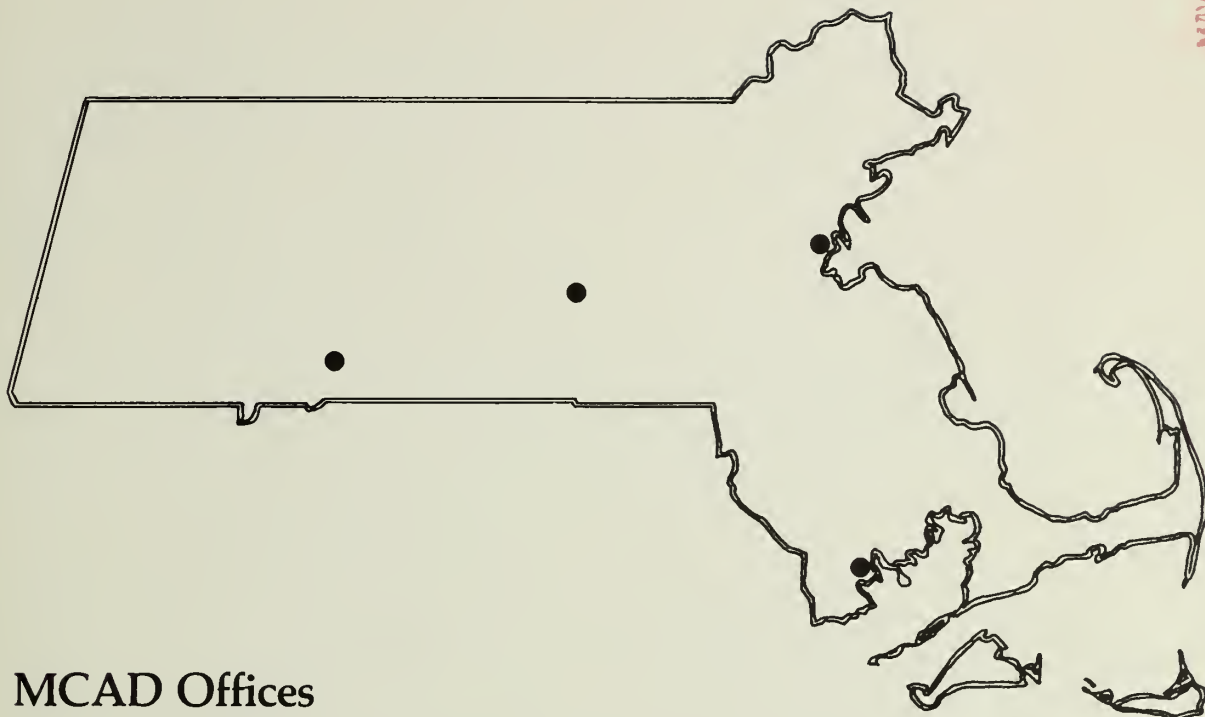
We at the MCAD are here to see that *all* the people living in Massachusetts in the 1980s have a chance to make those decisions without fear of illegal discrimination. The issues we'll be facing are many and complex, but our objective is clear—to make sure that, throughout the 80s, people in Massachusetts will be truly free—free to make something special of their lives and free to make the Commonwealth a special place in which to live.



If You Ever Need Us

MAY 18 1982

MAY 19 1982



MCAD Offices

The Commission's staff is available to receive telephone inquiries or accept complaints on weekdays from 8:45 a.m. to 5 p.m.

Boston Office: Sixth Floor, One Ashburton Place
(the McCormack State Office Building)
Boston, MA 02108
727-3990

Worcester: 75-A Grove Street
Worcester, MA 01605
752-2272

Springfield: 145 State Street
Springfield, MA 01103
739-3330 or 739-2145

New Bedford: 222 Union Street
New Bedford, MA 02740
997-3191



mcad

1980

annual report

State Library of Massachusetts
State House, Boston



MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

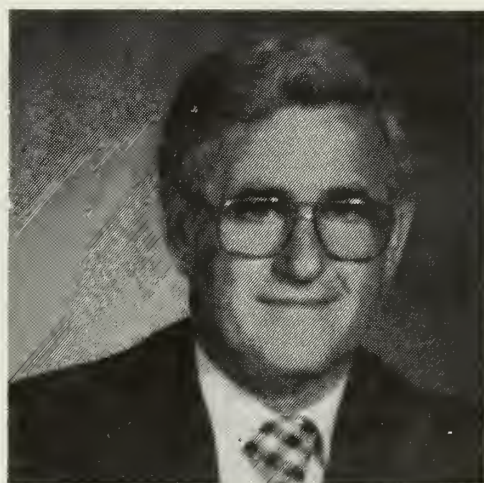
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1980 REPORT to the Commonwealth of Massachusetts



Edward J. King
GOVERNOR



Edward T. Hanley **SECRETARY**
ADMINISTRATION AND FINANCE

Massachusetts Commission Against Discrimination

Commissioners

Darrell L. Outlaw
Chairman

Sam Stonefield
Commissioner

January 1981



The Commonwealth of Massachusetts
Commission Against Discrimination

1 Ashburton Place, Boston 02108

ADMINISTRATIVE SERVICES: 727-3990

January, 1981

The Honorable Edward J. King, Governor
and
The Honorable Members of the General Court
Commonwealth of Massachusetts

Ladies and Gentlemen:

Pursuant to Massachusetts General Laws Chapter 151B, section 3, Paragraph 11 The Massachusetts Commission Against Discrimination is pleased to present you with a report of the Commission's activities in 1980.

This report sets forth the Commission's progress in fulfilling our statutory mandates, the activities of each of our Divisions and our fiscal state. We are proud of the accomplishments of the Commission over the past year and hope that we can continue to serve the citizens of the Commonwealth in enforcing the civil rights laws.

We appreciate the support and assistance you have given the Commission in the past and look forward to working with you in the coming year.

Very truly yours,

Darrell L. Outlaw

DARRELL L. OUTLAW
Chairman

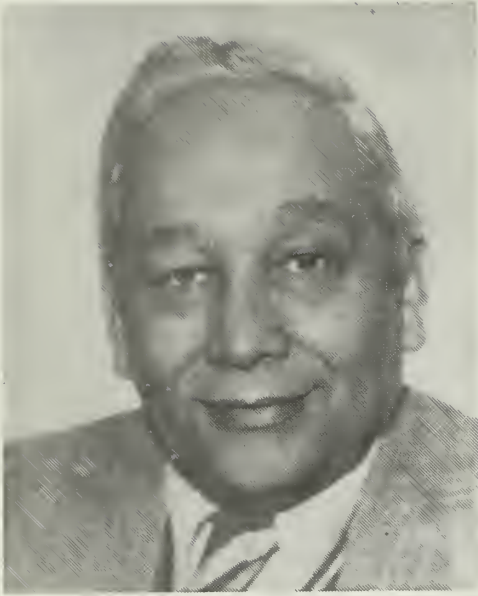
Samuel Stonefield

SAMUEL STONEFIELD
Commissioner

Contents

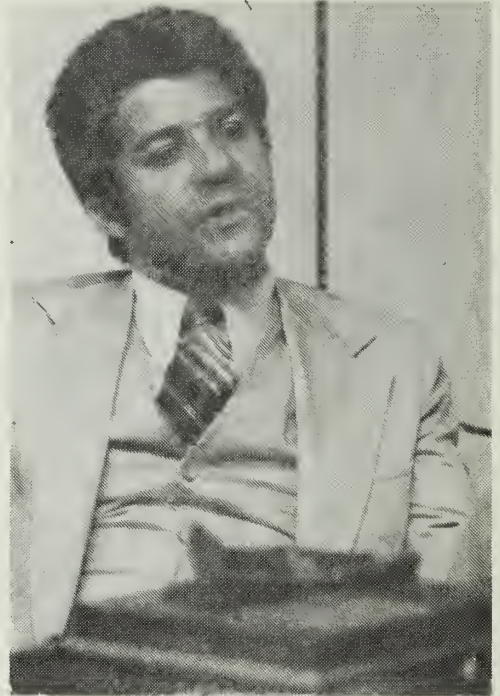
The MCAD Commissioners	2
The MCAD in 1980	3
Discrimination:	
Legal and Illegal	4
The Complaint Process	4
MCAD Division Reports:	
Administrative Services	7
Case Control	9
Investigations	10
Legal	11
Public Sector	12
If You Ever Need Us	15
Advisory Councils	16

The MCAD Commissioners



Darrell L. Outlaw
CHAIRMAN

Commissioner Rodriguez, a graduate of Goddard College and a former Loeb Fellow at Harvard University, has a business management background and has focused his attention on the development of the MCAD's case processing and management information systems. Commissioner Rodriguez resigned his position in December of 1980.



Alex Rodriguez
COMMISSIONER



Samuel Stonefield
COMMISSIONER

Commissioner Stonefield, a graduate of Dartmouth College and Harvard Law School, is an attorney from Springfield, Massachusetts. A Commissioner since 1977, he developed the Massachusetts Discrimination Law Reporter, and has authored many major opinions. He oversees the legal and legislative work of the Commission, and is also responsible for the Western Massachusetts activities both in case processing and civil rights reviews.

The MCAD in 1980

REPORT FROM THE COMMISSIONERS

The year 1980 has been one of change and growth for the Commission. There has been a significant rise in complaint intake reflecting an increasing awareness by the citizens of the Commonwealth of their rights under the civil rights laws. In 1980 there were 1,954 complaints filed, the second highest number of complaints in the Commission's history, and the number continues to rise. This increased complaint activity has been particularly evident in the areas of sexual harassment and age discrimination indicating a new willingness on the part of women and older workers to come forward when they believe their rights have been violated.

In 1980 the Commission's jurisdiction over discrimination against handicapped persons in public accommodations became effective. The Commission sees discrimination against the handicapped as the frontier of civil rights activity in the 1980's and expects increased responsibilities in this area.

1980 also saw a freeze on state funded positions which presented a real challenge to the Commission's efforts to continue to increase productivity. We hope that conditions in 1981 will allow us to be fully staffed so that we can provide effective and efficient service to the citizens of the Commonwealth.

HIGHLIGHTS

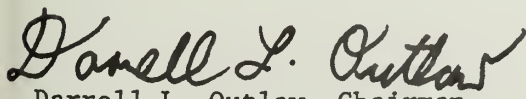
GRANTS AND AWARDS - In 1980 the Commission received a total of \$554,527 in federal funds, \$489,677 from the U.S. Equal Employment Opportunity Commission and \$64,850 from the U.S. Department of Housing and Urban Development. In view of the state freeze these resources are even more important in allowing the Commission to serve the public well.

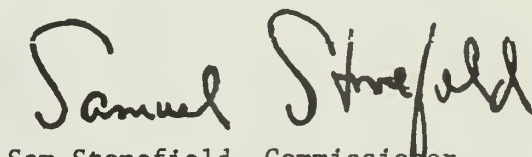
HEARINGS, DAMAGES AND CASE CLOSURES - During the past year the Commission doubled the number of public hearings held. In 1980 the Commission awarded \$705,012 in damages and settlements to complainants and closed a total of 1,856 complaints.

SIGNIFICANT LITIGATION OR DECISIONS - Over the past year the Commission has issued important decisions involving discrimination in housing on the basis of marital status, the application and scope of BFOQ's, and sexual harassment in the workplace. The Commission is currently involved in the appeal of a major age discrimination case before the Supreme Judicial Court.

NEW MEMORANDA OF AGREEMENT - An additional 27 Agreements signed during the past year brings to 137 the number of Massachusetts communities that are actively developing affirmative action programs in housing, employment and contract compliance.

SPECIAL RECOGNITION - The Commissioners would like to give special recognition to our dedicated staff who have worked tirelessly in the face of increasing challenges. Without their commitment and energy to the goals of the Commission we would not have been able to achieve the accomplishments of the past year.


Darrell L. Outlaw, Chairman


Sam Stonefield, Commissioner

Discrimination: Legal and Illegal

Many kinds of discrimination are illegal. But it is important to understand that, even today, *some* kinds of discrimination under *some* kinds of circumstances are not prohibited by law. Only when we, the people of Massachusetts, through our state legislature decide that a particular practice is not only unfair, but something people in the Commonwealth should be protected against, is a law passed making that form of discrimination illegal. The kinds of discrimination that are illegal are defined precisely by law. The chart on the next page, although greatly simplified, will give you some idea of the *general areas* covered by our anti-discrimination laws.

The MCAD Fights Illegal Discrimination

The Massachusetts Commission Against Discrimination (MCAD) is the civil rights law enforcement agency for the Commonwealth of Massachusetts. Operating under a broad statutory mandate, the Commission is empowered to investigate and decide cases of discrimination in the areas of employment, housing, public accommodations, credit, services, and education. The Commission can receive and initiate complaints. It has strong investigatory powers and clear authority to require remedies where discrimination has been found to exist.

As a law enforcement agency, the MCAD's goal is full compliance with civil rights laws and regulations, and the Commission's efforts are all designed to achieve that goal. In addition to handling complaints, the Commission promulgates rules and regulations, and both monitors and assists businesses and government in their civil rights compliance efforts.

The Complaint Process

Four Things You Should Know About the MCAD Complaint Process

1. **IMPARTIALITY:** The MCAD is an impartial, objective investigating agency. We are not "for" or "against" anyone or any side. Our investigators are neutral and professional, and their decisions are based on facts and evidence. If and when a determination of probable cause is made, the Commission may provide, through the General Counsel, an attorney to conciliate and to present the case at a public hearing. The complainant may be represented by an attorney of his or her own choosing or by a Commission attorney.
2. **TIMING:** Massachusetts Law requires that all investigations proceed promptly. Everyone benefits from a prompt decision; everyone loses by delay. To keep cases moving, we impose certain deadlines which must be observed.
3. **SETTLEMENTS:** We encourage and actively work to achieve settlements. We want to help both parties achieve a voluntary resolution to the complaint whenever possible.
4. **RETALIATION:** Massachusetts Law, M.G.L., Chapter 151B, Section 4(4), specifically prohibits any retaliation against any person who has filed a complaint, participated in any investigation or otherwise opposed allegedly discriminatory practices and the MCAD strongly enforces this law. Any harassment or action adverse to the complainant or witnesses must be carefully and completely avoided.

Major Areas in which Discrimination Is Illegal

Employment:

The Fair Practices Law protects the rights of Massachusetts workers to obtain and maintain employment free of discrimination. Coverage extends to advertising, hiring, discharge and all terms and conditions of employment.

Public and Private Housing:

It is illegal to discriminate in the sale, rental or leasing of property, housing or apartments and all related services such as advertising, showing of property, obtaining a mortgage, etc.

Public Accommodations:

No one may be denied services or access to any place, whether licensed or unlicensed, which solicits or accepts the patronage of the general public (hotels, restaurants, stores, transportation, hospitals, etc.). No distinction may be made on the basis of race, sex, physical or mental handicap, religious creed, or national origin.

Credit and Services:

People may not be denied credit because of their race, religion, sex, marital status, national origin, age, or status as a recipient of public assistance. Discrimination is also prohibited in advertising, approving a loan, and extending credit.

Educational Institutions:

Massachusetts mandates equal educational opportunities for all of its citizens in any educational institution which accepts students or applications from the general public.

Protected Classifications

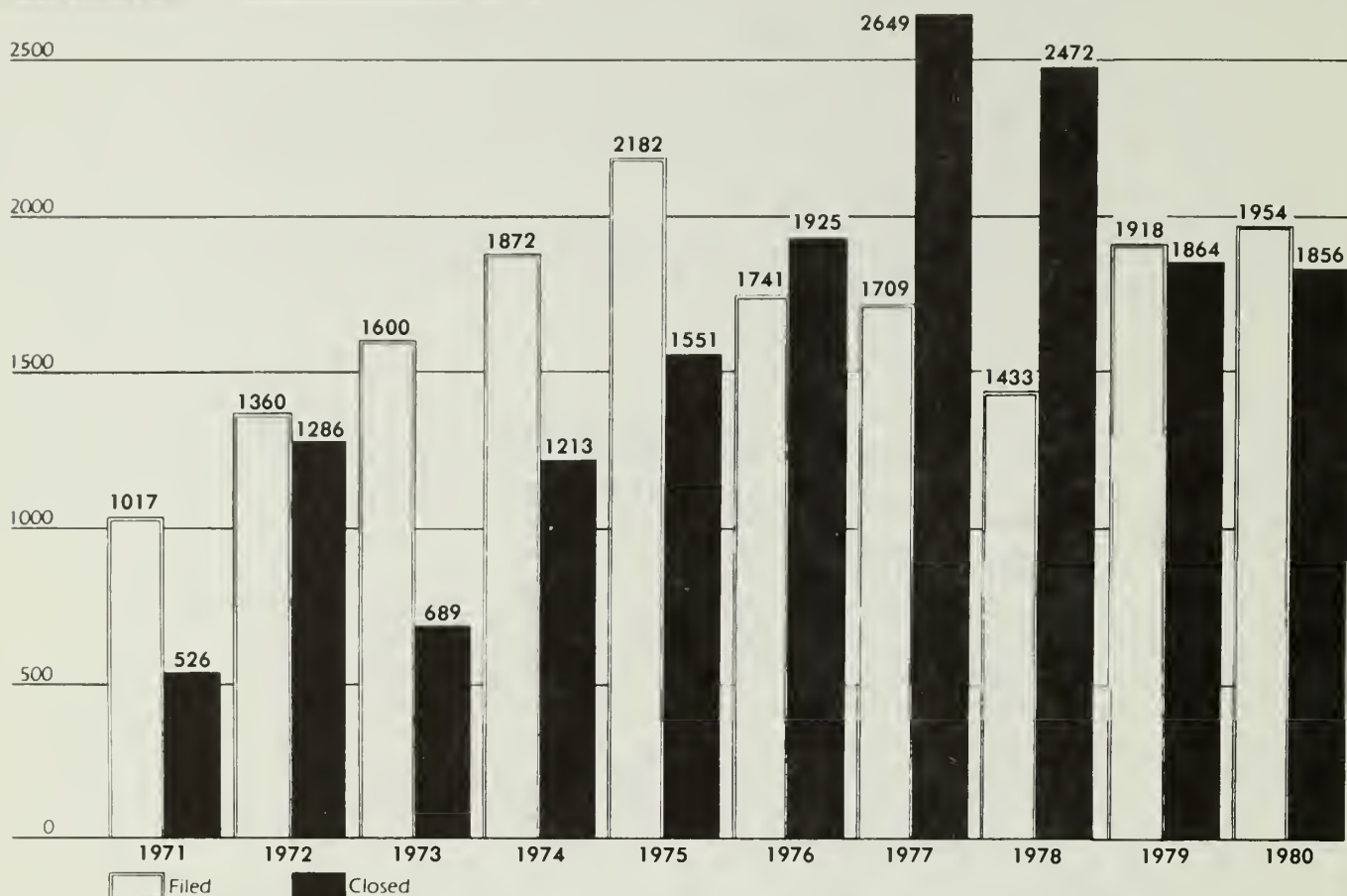
	Employment	Public Accommodations	Public and Multiple Dwelling	Other Covered Housing	General Education	Post-Graduate & Vocational Education	Financial Credit
Race	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Color	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Religion/Creed	Protected	Protected	Protected	Protected	Protected	Protected	Protected
National Origin	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Ancestry	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Sex	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Age	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Marital Status	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Persons with Children	Protected	Protected	Protected	Protected	Protected	Protected	Protected
General Handicap	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Blindness	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Deafness	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Welfare Recipients	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Veterans	Protected	Protected	Protected	Protected	Protected	Protected	Protected
Members of Armed Services	Protected	Protected	Protected	Protected	Protected	Protected	Protected

■ Protected

Important Note: Some protected categories, such as age in employment (40-65), are limited. Call or write to the MCAD for further information.

MCAD Complaints Filed and Closed

Calendar 1971 through 1980



What Does "Settling a Case" Mean?

The MCAD emphasizes the importance of settlement at every stage of the complaint process; the Commission is ready and willing to work with both parties to reach a mutually acceptable resolution, and will bring people together as soon as possible to discuss settlement terms. A settlement made prior to a Commission determination is not an admission of guilt or liability and results in a formal closing of the case.

A case can be settled when both the employer and the complainant (the person making the complaint) make an agreement which the Commission approves. A settlement may occur at any point in the case process and can be suggested to both parties by a representative of the MCAD or by one party to the other. A representative of the MCAD reviews settlements to see that they are fair.

One kind of settlement that occurs is a cash settlement. In the case of an illegal dismissal from a job, the case settlement may constitute severance pay. In the case of unequal pay for equal work, the settlement could result in a retroactive pay raise. From January 1, 1980, through December 31, 1980, complainants at the MCAD received \$705,012 in damages.

Another kind of settlement involves the job itself with the complainant receiving the job or promotion which was originally denied.

MCAD Divisions

The MCAD has five major divisions, each with its own manager: Case Control, Legal, Investigative, and Public Sector, and Administrative Services Division. The division heads make up the Commission's internal management task force. They meet together regularly both as a group and with the commissioners to participate in administrative and policy development decisions.

Administrative Services Division

Virginia W. Parks
DIRECTOR

The Administrative Services Division is responsible for providing administrative support for the Commission's operational divisions, including personnel, budget and general office management. Support services are also provided to the State Advisory Board and the eleven regional advisory councils.

Public information is also a responsibility of this division and in keeping with its commitment to public education, the Commission maintains a speakers' bureau, schedules television, radio and other public speaking engagements for the commissioners and staff, and arranges for radio and television public service announcements.

Fiscal Report

For the first time since 1975, the Commission's state appropriation reached the million dollar level. This allowed for expansion of both the Contract Compliance and Civil Rights Review programs by the addition of one new Field Representative to each. (See report of the Public Sector Division).

In October of 1979 the Commission successfully negotiated contract renewal with the U.S. Equal Employment Opportunity Commission (EEOC) for two contracts based on actual and projected performance levels. The contracts, one for "backlog" and the other for "new charge" complaints totalled \$457,150.

The Commission successfully completed the terms of the "backlog" contract, but due to the imposition of a freeze on the hiring of state-funded employees, the target for case closure under the "new charge" contract could not be met, and for the first time, this agency was required to accept a negative contract modification and return federal money to a funding agency.

In October of 1980, EEOC renewed the Backlog and New Charge Deferral Contracts and increased the rate per charge from \$350 to \$412.50.

The Public Sector Division also applied for and was successful in obtaining a Fair Housing Assistance Grant from the U.S. Department of Housing and Urban Development. This grant will enable the Commission to hire additional staff to process housing discrimination complaints both in the Boston and Worcester offices.

At the end of 1980 calendar year, the Commission had received the following federal awards:

FY 1981 Backlog Project Grant	\$274,313
FY 1981 New Charge Project Grant	215,364
HUD Fair Housing Assistance Grant	64,850
	<u>\$554,527</u>

MCAD FUNDING SOURCES 1975-1981

<u>Fiscal Year</u>	<u>State</u>	<u>Federal</u>	<u>Total Funding</u>
1975	\$ 978,777	\$ 125,000	\$ 1,103,777
1976	731,175	185,000	916,175
1977	785,464	320,309	1,105,773
1978	795,464	244,920	1,039,384
1979	975,000	691,530	1,666,530
1980	1,000,000	392,750	1,392,750
1981	1,053,891	554,527	1,608,418

Personnel

In 1980 the Commission received state funding for 47 permanent and 12 temporary employees. Two of the temporary positions were newly funded, however, the Commission failed to obtain their release until early into the FY/81 fiscal year.

Because of the state imposed hiring freeze, the Commission was forced to rely heavily on student interns and temporary clerical service agencies in order to conduct routine Commission business and maintain productivity. Several administrative problems have developed which are directly attributable to the inability to fill vacant positions.

Fortunately, federal funds were available to supplement the state-funded personnel. A total of twenty persons, including attorneys, investigators and clerical support staff are paid with federal funds. Despite a reduction in available investigative man hours, the Commission was able, through diligent staff effort and new management techniques, to maintain our high level of productivity. However, without a full complement of staff, we will be unable to meet the increasing demands of an ever growing caseload.

Affirmative Action

The Commission continues its strong commitment to the principles of affirmative action. This was clearly demonstrated by meeting all goals that were set for 1980. The Commission staff is composed of 45% minorities, 55% non-minorities; 40% males, 60% females.

In July, 1980 the Commission also adopted a Statement of Policy Toward Handicapped Persons as well as other minorities.

Public Information

In a continuing effort to inform the residents of the Commonwealth of their rights under the law, the Commission developed and distributed brochures which focused on the Commission, employment rights, age discrimination and maternity benefits.

By statute, employers having more than six employees must post in conspicuous places certain posters which define fair employment practices. In 1980, the Administrative Services Division undertook the revision, printing and distribution of 25,000 posters to all the Commonwealth's major public and private employers.

A particularly exciting project was the development of a 20-minute slide/tape presentation which provides a general orientation to the Commission, its history function and procedures. It has proven useful for speaking engagements, convention booths, and for meetings with various community groups.

Advisory Councils

The State Advisory Board appointed by the Governor and the Commission's Advisory Councils continue to play an important role in the Commission's activities. During 1980 the Councils and the Board supported legislation proposed by the Commission and disseminated information on discrimination law on television and radio throughout the state.

The Berkshire Advisory Council has operated a volunteer complaint office making it possible for persons in the far Western area of the state to file complaints and receive information on civil rights. The Merrimack Area Advisory Council, with the cooperation of a number of state and federal agencies, convened a Community Awareness Seminar dealing with discrimination in housing, education, civil service and criminal justice.

Members of all the local Councils and the Board cooperate with Commission staff in the Civil Rights Review Program and offer assistance to their local governments in developing Affirmative Action Plans.

Case Control Division

Terrence P. Morris
DIRECTOR

Established in 1977, the Case Control Division is the planning and monitoring arm of the MCAD and is responsible for providing monthly and weekly information and recommendations concerning management of the agency's case load. Under the direction of MCAD's Deputy Director of Administration, Case Control is in charge of the computerized case tracking and management information system (MIS). By centralizing case information, the MIS has reduced the length of time to respond to case status inquiries from hours or days to minutes. The MIS breaks down the MCAD case operation into over 70 measurable transactions, which enables the Case Control staff to identify bottlenecks in the case processing procedure. As a result, the MCAD is better able to monitor its own performance. Monthly reports detailing case intake and progress in case processing are circulated by the Case Control Division as a continuing progress report. Currently the Case Control Division is using the output of the MIS to identify additional ways to increase the efficiency of case management.

This division assumed increased significance during 1980 as budgetary restrictions severely hampered the agency's case processing capabilities. Efficient allocation of the Commission's scarce resources became the new challenge. As the production statistics on page 6 indicate, the challenge was successfully met. By directing a concerted effort, the Commission was able to identify and eliminate several significant impediments to efficient case processing. Most notable among these was a 33% reduction in cases on appeal from Lack of Probable Cause determinations.

Despite a hiring freeze which resulted in a significant reduction in available investigative work hours, Commission case processing productivity kept pace with 1979. During 1980 the system was used to identify multiple complaint respondents. Once targeted these respondents were the object of a consolidated and accelerated investigation and resultant early disposition.

Division of Investigations

Jahn A. Ramos
DIRECTOR

The Division responds to complaints of unlawful discrimination in private sector employment and education. It also employs investigators in the regional offices of Worcester, Springfield, and New Bedford. The investigative staff works in three units:

- The Intake Unit meets with people who wish to file complaints and draws up a complaint if jurisdiction has been established. In employment cases, this unit initiates the investigation by sending interrogatories to the employer.
- The Current Unit investigates recently filed private sector cases. The primary responsibility of the current unit is to settle complaints when possible.
- The Backlog Unit works from the older cases still on file, from the oldest towards the present. It is the responsibility of this unit to continue to implement the legislative mandate to continue to reduce the backlog in the Commission's case inventory.

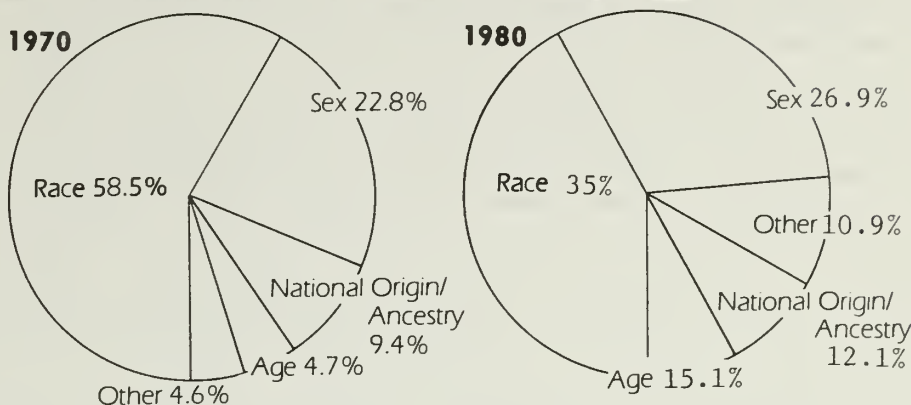
If a complaint is closed for Lack of Probable Cause, the complainant has ten days after the date of service to appeal to the Office of the General Counsel. After a preliminary hearing and review, the Hearing Commissioner may affirm, remand or reverse the finding. If Probable Cause is found, the Commission will seek through conciliation to secure the complainant's rights and to eliminate any unlawful discriminatory practice. If conciliation efforts fail, the complaint is certified for Public Hearing by the Investigating Commissioner. Following Public Hearing, a decision is issued by the Hearing Commissioner. If the Commissioner finds that discrimination took place, a "Cease and Desist" order will be issued which is enforceable in court.

Staff of the Division continued to receive training in rapid case processing in sessions conducted by the Equal Employment Opportunity Commission in the summer of 1980. The Commission will be receiving additional training modules from the EEOC for use on the Commission's Audio Visual equipment. These training materials will allow the Commission to conduct its own training sessions both for staff and community groups. The Division of Investigations continued its efforts in improving the quality and quantity of service to the public. Much of this effort has been in the continued refinement of the Commission's intake process.

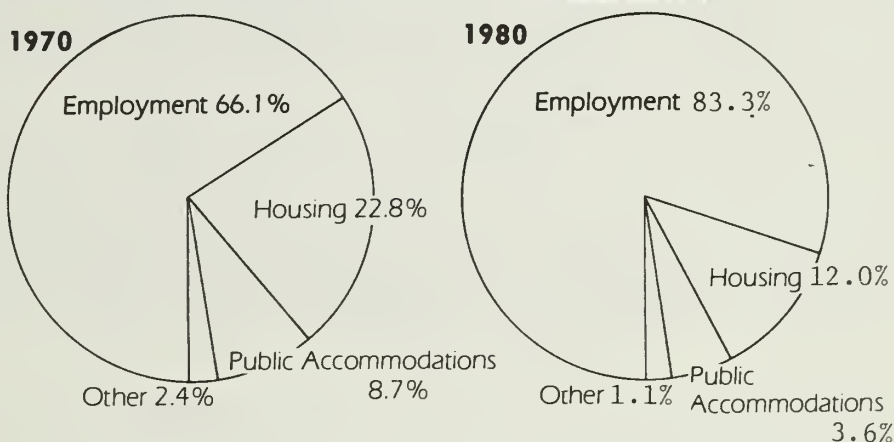
As shown in the charts on page 11, there have been significant changes in the nature of complaints filed at the Commission over the past ten years. In 1970 race and sex complaints together accounted for over 81% of all complaints filed. In 1980, race and sex complaints were down to 62% of all complaints while age complaints more than tripled, going from 4.7% of all complaints in 1970 to 15.1% in 1980. Employment complaints increased from 66.1% of all complaints filed in 1970 to 83.3% of all complaints in 1980.

The past year saw a reduction in staffing for the Division and a resultant decrease in expected productivity due to a state imposed hiring freeze. The Commission hopes in 1981 to be able to fill vacant positions so that our goal of efficient and effective service to the public can continue.

Discrimination Charged in Cases Filed with the MCAD



Areas of Discrimination in Cases Filed with the MCAD



Legal Division

Anne H. Taylor, General Counsel

The Legal Division serves as in-house counsel to the Commission. The duties of the General Counsel and staff attorneys are varied and include advising investigators on complex investigations, reviewing investigative recommendations to the commissioners, attempting conciliation after a Probable Cause finding, and litigating where conciliation fails. Commission attorneys also represent the Commission in all state and federal courts.

The year 1980 was an important year of accomplishment for the Legal Division. The Commissioners appointed a new General Counsel, the first woman to hold this position in the history of the agency. A monthly "call of the list" was instituted. With this new procedure cases certified for public hearing are docketed for call, thus requiring counsel for the parties to appear, declare their readiness for trial, and assent to a date certain for the public hearing. Implementation of this procedure has resulted in a significant increase over 1979 in the number of public hearings held, and a corresponding reduction in the backlog of cases pending. Additionally, this procedure has encouraged the settlement of cases, resulting in a 30% increase over 1979 in the number of cases conciliated after a causal determination has been made. The backlog of cases in the public hearing process has been reduced from 244 in 1979, to 220 in 1980.

The past year witnessed several important substantive developments in the body of state anti-discrimination law. In the past year the Commission issued major opinions on such issues as discrimination in housing on the basis of marital status; the scope and application of the statutory BFOQ defense; and the coverage of Chapter 151B in cases of sexual harassment in the workplace. The Commission's position on its jurisdiction to accept complaints based on sexual preference was examined by the Supreme Judicial Court and sustained. Additionally, the Commission, in participation with private counsel, is seeking review by the Supreme Judicial Court of a landmark MCAD opinion concerning age discrimination. This appeal, scheduled to be heard by the Supreme Judicial Court in early 1981, promises to be the first case in the nation to directly address the question of the legality under the civil rights laws of discrimination in favor of older persons within that protected class.

The Commission's Rules for Procedure were redrafted in 1980 with the active participation of legal and investigative staff, as well as members of the private bar representing both complainants and respondents. These new rules are an important step in simplifying and expediting all proceedings before the Commission. Public hearings on the new rules will be held in early 1981, with final promulgation expected shortly hereafter.

The Commission's jurisdiction over discrimination on the basis of handicap in public accommodations became effective on January 1, 1980. The legal staff has assisted advocacy groups in developing regulations designed to implement this new law. The Commission has also voted to support legislation currently filed which would grant the agency jurisdiction to accept and resolve complaints of discrimination in employment on the basis of handicap.

Public Sector Division

Roger C. MacLeod,
DIRECTOR

Among the duties of the Public Sector Division is the obligation to investigate all public sector employment, housing, credit and public accommodation complaints. But it is also a discrimination prevention arm of the MCAD. By working with local officials in cities and towns to meet equal opportunity requirements in housing, employment and contract compliance, the Division both prevents possible future discrimination complaints and supports the communities in their requests for federal and state funds.

The Division has four special function operating units:

- **The Housing and Public Accommodations Unit** handles complaints of discrimination in housing, public accommodations and credit.
- **The Public Employment Unit** handles employment discrimination in cases where the employer is either a state agency, a county, or one of the cities and towns in the Commonwealth.
- **The Contract Compliance Unit** makes sure that contractors who have construction contracts with state agencies adhere to the requisite affirmative action requirements in the contracts. The unit provides technical assistance to cities and towns instituting contract compliance proceedings.

The Civil Rights Review Unit's principal function is to enforce civil rights compliance within Massachusetts cities and towns in the areas of employment and housing and contract compliance. The Review Unit does not receive complaints; it tries to identify and resolve issues before they are litigated by working directly with cities and towns. Federal grant program requirements stipulate that cities and towns seeking federal and state money prove that they are in compliance with federal anti-discrimination laws. The review requirements are stated in a federal "A-95" regulation.

The Housing and Public Accommodations Unit

Significant change has occurred in the Housing Unit during 1980. A Memorandum of Agreement with the United States Department of Housing and Urban Development was signed on March 5, 1980 requiring the development of a cooperative case processing system between the federal and state government, development of compatible enforcement systems and provision for significant financial assistance for the MCAD.

Implementation of the program under the terms of the Memoranda of Agreement has been quite successful. It has been accomplished with minimum difficulty on the part of the respective agencies. The Commission is easily within range of achieving, during 1981, the goal of an average case processing time of less than 60 days from filing date to closure.

A grant for \$64,850 was awarded to the Commission by HUD to provide complaint processing assistance for the housing unit. Contracts for these monies were signed on October 21, 1980 and provide for two housing investigators, one in the Worcester and one in the Boston office, and clerical support.

In July the Commission filed a second series of applications with HUD for a total of \$164,990. This money consists of applications in the areas of technical assistance, data and information systems, and innovative projects (pattern and practice investigation). The Commission expects to hear the results of these applications in early 1981.

The Public Employment Unit

As a consequence of the economy, increased awareness by public employees of their statutory rights and other factors, there has been a significant growth in the number of public employment complaints filed with the Commission. The number of public employment complaints has increased in 1980. The significant growth in the new public sector complaints has, unfortunately, increased the public sector backlog, a reversal of a trend which had held through April of 1980. As a result the Commission has found it necessary to reallocate scarce resources to deal with this important area.

The Contract Compliance Unit

For the first time in a decade, positions were available to hire staff with responsibilities for state and local affirmative action requirements on construction contracts. During the past year considerable effort has gone into a revision of the state monitoring and performance system; development of a compliance monitoring manual and initiation of programs providing technical assistance to communities for the development of affirmative action programs in the construction area. The Commission continues to provide assistance to state agencies in the development and implementation of their programs. Considerable time was spent with the Bureau of Building Construction on the \$60 million State Transportation Building contract.

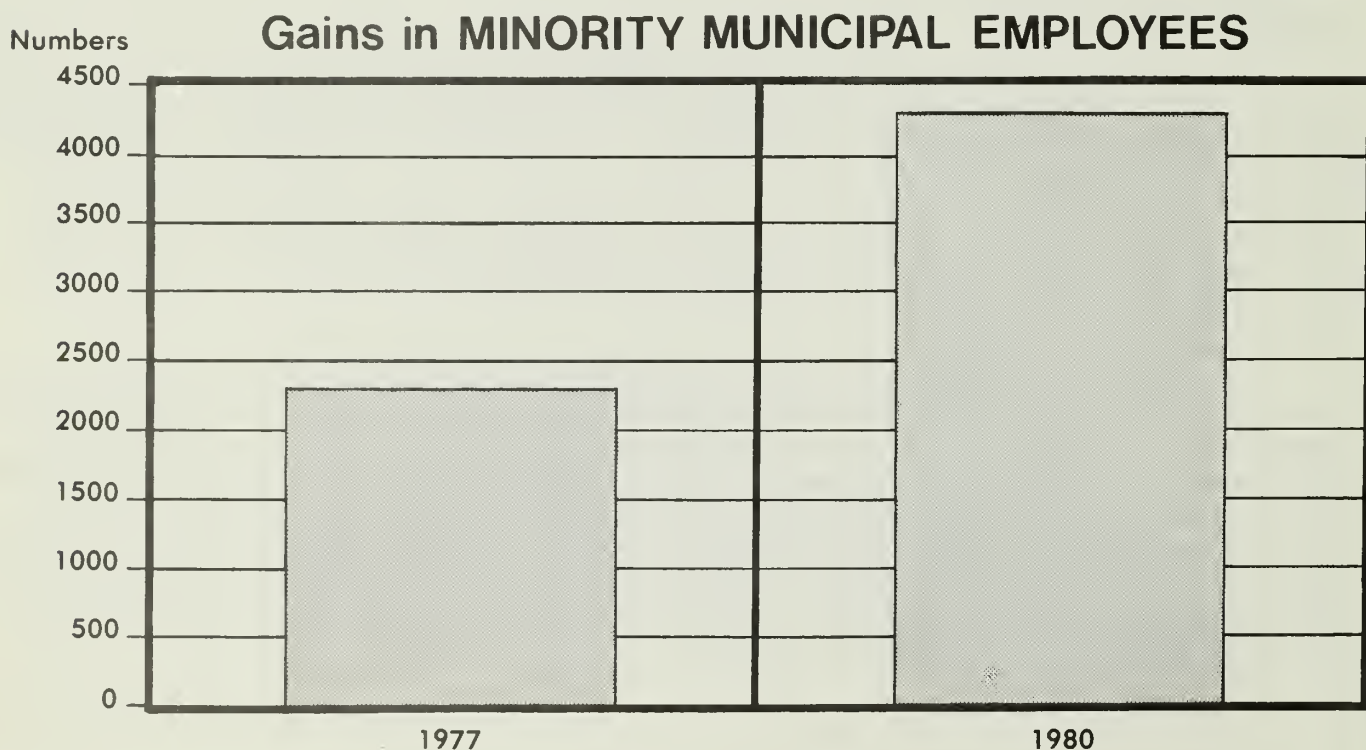
The Civil Rights Review Unit

1980 was a period of increased growth and consolidation of program activity in the Civil Rights Review Program unit. Twenty-seven Massachusetts communities were added to the list of municipalities initiating and developing affirmative action programs in employment, housing and contract compliance. In addition to the 137 communities with Memoranda of Agreement, there are over 60 smaller towns which routinely report on their employment profiles and employment practices but which are not required to maintain affirmative action programs because of their population size.

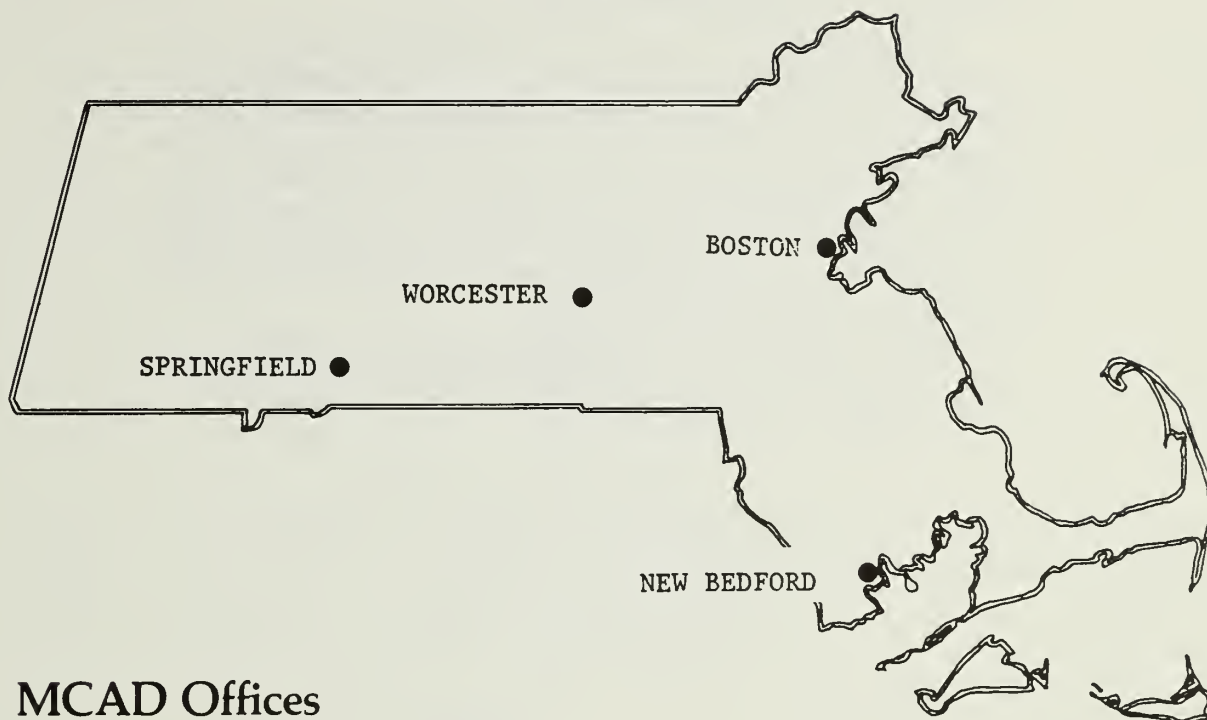
One important development in program activity during 1980 was the creation of a compliance specialist position to assure timely and adequate reporting of program activity and results by cities/towns. A major restructuring of compliance and enforcement activity has been underway for the past four months of 1980. This effort is expected to conclude with the development of a management information system which will be computerized and functioning by June 1981.

A three year retrospective review of the Civil Rights Review Program was initiated in November of 1980. A final and complete report is expected to be issued by the end of January 1981 which will outline accomplishments and problems of the past three years, and identify program goals for the next two years. The impact of Proposition 2 1/2 on local budgets will unquestionably affect employment opportunities at the municipal level. At the same time sufficient growth has occurred in the development of fair housing programs so that new initiatives in that area are necessary and appropriate.

Preliminary data indicates that for the period of July 1, 1977 through July 1, 1980, there was a significant net gain of at least 1,543 minorities employed by municipal government in client communities. We expect this preliminary total to increase by approximately 20% as final computations are run. As the chart below indicates, minority municipal employment has risen from slightly over 2000 in 1977 to almost 4500 in 1980. These gains translate into an annual dollar payroll value in excess of \$15 million per year.



If You Ever Need Us



MCAD Offices

The Commission's staff is available to receive telephone inquiries or accept complaints on weekdays from 8:45 a.m. to 5 p.m.

Boston Office: Sixth Floor, One Ashburton Place
(the McCormack State Office Building)
Boston, MA 02108
727-3990

Worcester: 75-A Grove Street
Worcester, MA 01605
752-2272

Springfield: 145 State Street
Springfield, MA 01103
739-3330 or 739-2145

New Bedford: 222 Union Street
New Bedford, MA 02740
997-3191

Advisors Across the State

The MCAD now has a strong network of advisors in regional councils across the entire Commonwealth. There also is a Statewide Advisory Board which coordinates the activities of the regional councils, reviews the implementation of the Commission's programs and policies, and advises both the Commission and the Governor of the Commonwealth on matters of policy affecting the Commission. The Board is appointed by the Governor and represents the regional councils and interest groups affected by Commission actions. Board members serve without compensation. Current members are listed inside the front cover.

There are regional advisory councils based in: Boston, Fall River, Fitchburg, Lawrence, Lynn, New Bedford, North Dartmouth, North Weymouth, Pittsfield, Springfield, Worcester.



The eleven regional Advisory Councils include representatives of owners and brokers of residential property; major lending and credit institutions; major private employers; a local personnel or civil service administrator; local post-secondary educational institutions; local labor organizations; minority racial, ethnic and linguistic groups; women; elderly and handicapped persons; and recipients of public assistance. These councils advise the Commission on matters of public policy, inform the Commission on local discrimination problems, and conduct seminars in their communities for employers, lawyers, realtors, bankers, etc. Another example of community and advisory council working together is the volunteer office in Pittsfield where the local C.A.P. office, Action for Opportunity, takes complaints, types them up and sends them to the Springfield Office of MCAD to be processed and investigated.

Statewide Advisory Board

- Scoba F. Rhodes, Acting Chairperson, Southeastern Mass. Univ., E. Falmouth
Myron S. Alexander, Vice-Chairperson, Manufacturer, Boston
- *John Andrade, Minority Recruiter, New Bedford
Elsi Basque, Commissioner of Indian Affairs, Abington
Lawrence Beane, Banker, Springfield
Dora Bastarache, Community Worker, New Bedford
Carmen S. Canio, Area Health Education Center, Watertown
Edna Hodgson, Senior Citizens Organizer, Jamaica Plain
Edward M. Berger, Manufacturer, Sharon
Terasita Rivera, Western Massachusetts Legal Services, Springfield
- *James W. McClain, Businessman, Stoughton
Peter Kin-Lap Chan, Chinatown Little City Hall, Boston
Donald Butler, Banker, Pittsfield
Manuel Carreiro, Southeastern Mass. University, New Bedford
Frederick Fay, Tufts New England Medical Center, Boston
- *Nina Galvin, Spanish American Union, Springfield
Elizabeth Gittes, Attorney, Boston
- *David Hampton, Third World Jobs ClearingHouse, Worcester
- *Barbara Schnuer, Community Worker, Lunenburg
Scott M. Stearns, Jr., Realtor, Longmeadow
Joel P. Suttenger, American Jewish Committee, Boston
- *David Wharton, North Shore Community Center, Lynn
- *Syvalia Hyman, III, United South End Settlements, Boston
Polly Jackson, Massachusetts League of Women Voters, Lincoln
- *Charlotte Lawrence, Greater Lawrence Community Action Council, No. Andover
Thomas A. Mela, Massachusetts Advocacy Center, Needham
Amelia Miclette, State Civil Service Commission, Malden
- *Elizabeth Metz, Bristol Community College, Westport
- *Chairperson of regional advisory council

Regional Advisory Council Chairpersons

- Nina Galvin, Springfield Advisory Council
George Morrison, Boston Advisory Council
Scoba F. Rhodes, Cape Cod Advisory Council
Elizabeth Metz, Fall River Advisory Council
Michael Ciota, Fitchburg Advisory Council
Dennis Powell, Berkshire Advisory Council
David Hampton, Worcester Advisory Council
Carlos Ruiz, Merrimack Valley Advisory Council
James W. McClain, South Shore Advisory Council
David Wharton, North Shore Advisory Council
John Andrade, New Bedford Advisory Council



State Library of Massachusetts
State House, Boston

M C A D



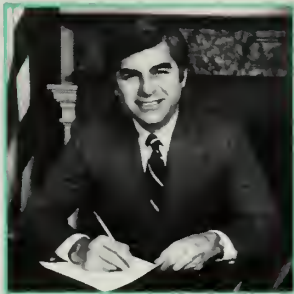
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Contents

Letter to the Governor	3
History	4
MCAD Commissioners	5
Budgets, Contracts	7
Administration	9
Case Control	10
Investigations	11
Legal	15
Public Sector	17
Organizational Chart	19
Task Force	20
Advisory Board	20
Future Directions	Inside Back Cover



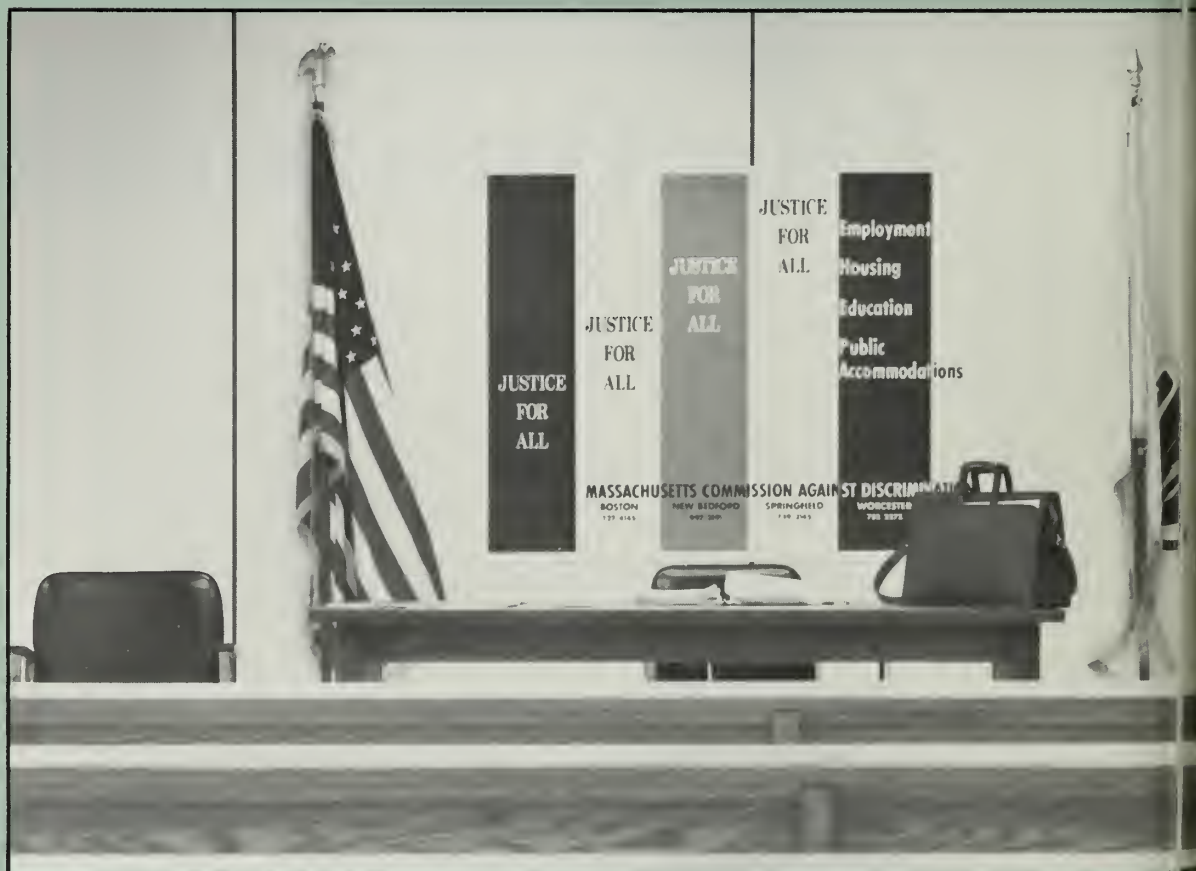


Michael S. Dukakis
Governor

Massachusetts Commission Against Discrimination

1981-1982 Annual Reports

Commissioners: Leon A. Brathwaite II, Chairman Margot P. Kosberg Kenneth J. Cote, Jr.





The Commonwealth of Massachusetts
Commission Against Discrimination
1 Ashburton Place, Boston, Massachusetts 02108

The Honorable Michael Dukakis,
Governor and
The Honorable Members of the General Court,
Commonwealth of Massachusetts

Ladies and Gentlemen:

In accordance with the Massachusetts General Law, Chapter 151B, Section 10, we are pleased to present to you the annual report for the Massachusetts Commission Against Discrimination.

The report details the Commission's 1982 efforts and accomplishments in complying with its statutory and regulatory mandates to eliminate discrimination in employment, public accommodations, public and multiple dwellings, housing, education and financial credit.

The MCAD is a unique agency. Its activities are often well publicized and hotly debated. Many of its achievements are frequently misunderstood or rejected on philosophical grounds. Nonetheless, it has, during its tumultuous existence, generated millions of dollars of relief for victims of discrimination and has stimulated hundreds of communities to adopt modern equal opportunity and affirmative action policies.

These achievements could not have taken place without the considerable efforts of a highly competent professional staff. We, therefore, dedicate this report to the men and women of the Commission.

Sincerely,

A handwritten signature in dark ink, appearing to read "Leon A. Brathwaite, II".

Leon A. Brathwaite, II

A handwritten signature in dark ink, appearing to read "Kenneth J. Cote, Jr.". The signature is somewhat stylized and includes a large initial "K".

Kenneth J. Cote, Jr.

A handwritten signature in dark ink, appearing to read "Margot P. Kosberg". The signature is written in a cursive style.

Margot P. Kosberg



A Century of Progress

The Commonwealth of Massachusetts first pioneered among the states in legislating against discrimination in public education and public accommodations. These concerns have now broadened to include legislation defining discrimination in such areas as housing, employment, sex and the aged.

It was six years before the Civil War that the Commonwealth of Massachusetts first pioneered among the states in enacting laws forbidding discrimination in public education and public accommodations. These noteworthy efforts, however, failed to address discriminatory practices in the workplace. Employment discrimination in 185 was not only legal in Massachusetts but, in fact, commonly practiced.

It was not until 1946 that the law prohibiting discrimination in employment was passed. The year 1946 also witnessed the creation of the Fair Employment Practices Commission as the enforcement agency for civil rights legislation.

In 1950, the Commission's name was changed to the Massachusetts Commission Against Discrimination (MCAD). Since then, there have been dramatic jurisdictional changes resulting from new federal and state laws, as well as court decisions in the civil rights field. MCAD's responsibilities have grown to absorb these concerns.

Along with the impact of the law, the MCAD's workload has increased tremendously. In the seventies, the number of complaints averaged 1,700 per year — six times the average annual caseload of the Commission's first eighteen years. Moreover, recent complaints reflect the Commission's broadened categories of discrimination.

Areas of Discrimination

Race
Color
Religion/Creed
National Origin
Ancestry
Sex
Age
Marital Status
Persons with Children
General Handicap
Blindness
Deafness
Welfare Recipients
Armed Services

Employment	Public Accommodations	Financial Credit	Public and Multiple Dwelling	Other Covered Housing	General Education	Post-Graduate & Vocational Education
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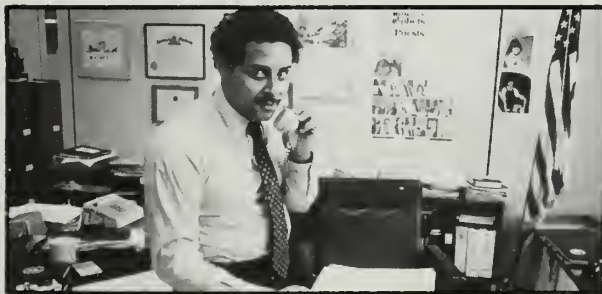
Protected Classifications

The MCAD Commissioners

The Commission is comprised of three Commissioners, appointed by the Governor to serve staggered 3-year terms. Each Commissioner is responsible for a geographic portion of the state.

Commissioner Leon A. Brathwaite, II, Chairman

Leon Arthur Brathwaite II's appointment as Chairman of the MCAD in February, 1981, climaxes a long history of civil rights involvement. He began his career as an EEO Officer at Norris Industry. He has also held positions with H. P. Hood and Stone & Webster Engineering before joining state service as the State Director of Affirmative Action in 1977. As the state's Director of Affirmative Action, Mr. Brathwaite established policy programs for state agencies in implementing affirmative action. Also, while with Affirmative Action, Mr. Brathwaite was one of the principals involved in the successful negotiation and implementation of the



Culbreath Consent Decree. Utilizing his affirmative action experience, Mr. Brathwaite has worked closely with the A-95 Review Program to establish improved civil rights programs in Housing, Employment and Minority Business Enterprise with eastern Massachusetts municipalities.

Mr. Brathwaite's civic and community involve-

ment includes the NAACP, the Big Brother Association of Boston and the Black Achievers Association. He is currently a member of the Democratic State Committee.

Commissioner Brathwaite's undergraduate studies were undertaken at Northeastern University, with subsequent studies through the Massachusetts State Management Program at the Harvard Business School and at the John F. Kennedy School of Government. Most recently, Mr. Brathwaite has served as a faculty advisor to the National Judicial College, University of Nevada-Reno.

Commissioner Kenneth J. Cote, Jr.

Commissioner Cote is a graduate of the University of Puerto Rico Law School. He is certified to practice law in Massachusetts and the federal courts of northern and eastern Texas.

As a private practitioner in Holyoke, he conducted a storefront practice located in the heart of that city's minority district. As a staff attorney with the Dallas office of the Equal Employment Opportunity Commission, he represented the U.S. Government in several million-dollar class actions. He has appeared in Courts throughout the Commonwealth, Texas and Oklahoma.



As the Commissioner from western Massachusetts, Attorney Cote has administered the operations of the Commonwealth's Worcester and Springfield offices, and the A-95 Program for western Massachusetts municipalities. He has also overseen the operation of the Commission's legal arm.

Commissioner Margot P. Kosberg

Margot Publicker Kosberg was appointed to the Commission in September, 1981, and was appointed to a full three-year term in March of 1982. Commissioner Kosberg began her work in state service in 1972, as Director of the Consumer Complaint Division of the State Executive Office of Consumer Affairs. Attorney Kosberg next served as a Hearings Officer, sitting on several hundred Rate Setting Commission and Civil Service Commission appeal cases.

In 1978, Ms. Kosberg was appointed Counsel to the State Office of Affirmative Action, and in February of 1980, was appointed Culbreath Consent Decree Monitor, overseeing the implementation of the U.S. District Court consent decree involving the recruitment, hiring and promotion of minorities in four large state agencies. In June of 1981, she was appointed Director of Administration of the MCAD, serving in that capacity until her appointment as Commissioner.

Commissioner Kosberg, a graduate of Western Reserve University, Cleveland, Ohio, and Boston University School of Law, and past president of the Massachusetts Association of Women Lawyers, has worked closely with the Commission's Legal Division to clear up numerous cases awaiting public hearing. Commissioner Kosberg was instrumental in the creation of the MCAD Multi-Cultural Awareness Task Force and has



worked with that group, as well as the MCAD's Advisory Board, to ensure a constructive flow of information and ideas.

Together with Chairman Leon Brathwaite, Commissioner Kosberg oversees the administration of the Boston and New Bedford offices of the MCAD.

The MCAD receives approximately one-half of its support from the state. A seven-year analysis of the Commission's budgets will show that, while the state funded the Commission with \$978,777 in 1975, that funding had grown by only \$26,000 in Fiscal 1982, an annual increase of less than \$4,000.

In Fiscal 1981, the MCAD's state budget was \$1,054,704. Its Fiscal 1982 budget was reduced 22% to \$859,739. In addition, the Commission received a reduced funding rate from the Equal Employment Opportunity Commission (EEOC) for failure to achieve EEOC performance standards during 1980-1981.

The Commissioners were thus faced with addressing issues of agency effectiveness, productivity and staff morale with a severely diminished arsenal of fiscal resources. Regrettably, one of the inescapable results of the cutback was the elimination of seventeen management, investigative and clerical positions.

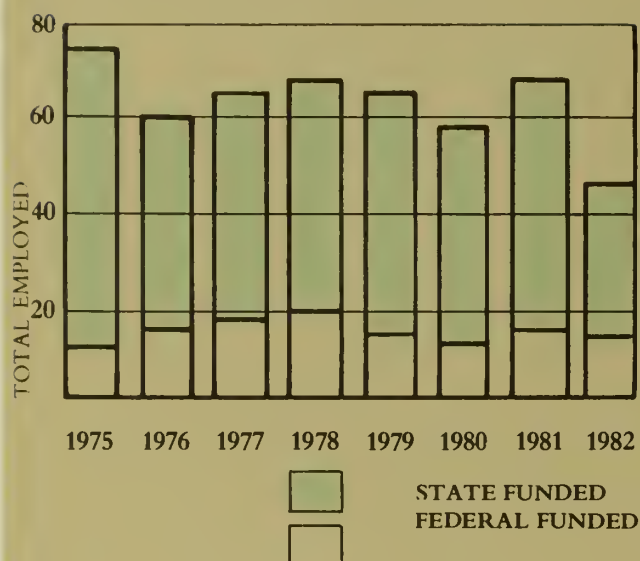
Budget Review

Budget	FISCAL YEAR								
	1975	1976	1977	1978	1979	1980	1981	1982	1983
STATE	978,777	731,175	785,464	795,464	975,000	1,000,000	1,054,704	932,969	1,005,005
FEDERAL	125,000	185,010	320,309	244,920	691,530	392,750	554,527	703,350	1,053,949
TOTAL	1,103,777	916,175	1,105,773	1,039,384	1,666,530	1,392,750	1,609,231	1,636,319	2,058,954
Expenditures									
STATE	835,995	679,291	681,083	706,409	863,914	992,917	917,992	914,478	
FEDERAL	171,533	162,692	218,530	336,627	349,903	535,398	461,034	481,511	
TOTAL	1,007,478	841,983	899,613	1,043,036	1,213,817	1,528,315	1,379,022	1,395,989	

In moving to meet the new challenges, the Commissioners developed and implemented the following strategies:

1. Prioritize Resources — A decision was made to grant first priority to all legislatively mandated activities.
2. Maximize Federal EEOC Funding — Efforts would be made to maximize total funding by meeting all Federal performance standards.
3. Speed-Up Case Processing and Resolution — A concerted effort would be made to develop and evolve investigative mechanisms that would achieve higher case-processing efficiency while maintaining federal grant assistance.

Changes in Employed Personnel



4. Obtain Other Federal Grants — Additional federal grant assistance would actively pursued.

With the imposition of new management techniques, dramatic results began emerge by the end of 1982. For example, 450 more cases were closed in 1982 than the previous year. EEOC performance standards, which the agency had failed to at in 1981, were met in 1982. As a consequence, payment for dual-filed cases increase from \$353 to \$393 per case. Additionally, as compared to 1981, the agency met all its contractual obligations with respect to cases closed, having extended the numb of closings to 1034 in Fiscal 1982 as compared to 661 in the previous period. The "bottom line" result from these improvements was an increase in funding by EEOC of \$105,857.

In Fiscal 1981, the first year in which the Department of Housing and Urban Development provided funding for the processing of Title VIII complaints, the MCAD received approximately \$64,000 in enforcement-capacity building funds. Fiscal 1983, the current operating year, the Commission will receive \$137,000 in t category, in addition to \$185,000 in Competitive Grants. Incidentally, the MCAI Housing Program was the recipient of the largest share of competitive Fair Housing Assistance Program dollars of any similar state or local program in the nation.

Fiscal 1983 Appropriations and Contracts

Fair Housing Assistance Program, Type I - Year III	\$ 1,000,000
Fair Housing Assistance Program, Innovative Projects Type II - Year II,	1,000,000
Fair Housing Assistance Program Information Data Systems	1,000,000
1983 EEOC Age Contract	1,000,000
EEOC Inventory Reduction Contract	1,000,000
EEOC New Charge Contract	4,000,000
EEOC Expenditure Ratification Contract	1,000,000
Total Federal	\$ 9,000,000
Total State	1,000,000
Combined Total	\$1,900,000

Administrative Services Division

The Administrative Services Division provides office support services for the Commission at its Boston headquarters and at three locations across the Commonwealth. The division is directly responsible for the daily management of personnel, including payroll functions, purchasing, accounting, maintenance of physical plant and other support activities. Another prime responsibility of the division is that of developing the Commission's annual state and federal budgets. This administrative area has become increasingly more complex with the growth of federal contracts awarded to the Commission, while, at the same time, the state legislature has imposed new procedures and controls for handling federal monies. These increased workload demands may require an augmentation to the division's personnel in the near future.

In addition to meeting the daily needs of the Commission's statewide operation, the administrative division

provides liaison to a number of state and federal agencies and departments. Included among these are the state offices of Administration and Finance, Budget Bureau, Personnel Division, Group Insurance Commission, Purchasing

Division, State Treasurer, Office of the Comptroller, the Senate and House Ways and Means Committees, and, on the federal level, with the Equal Employment Opportunity Commission.

Another continuing responsibility of the Administrative Services Division is that of providing informa-

tional services for the Commission. This function includes the development and distribution of brochures, posters and other communications to the Commission's field offices, community and municipal centers, public



service and neighborhood groups and the business community.

The administrative area has become increasingly more complex with the growth of federal contracts awarded to the Commission. At the same time, the state legislature has imposed new procedures and controls for handling federal monies.

Case Control Division

The Case Control Division bears the primary responsibility for effective management of the agency's case inventory. It performs the vital function of providing the Commission and its managers with accurate, reliable and timely information upon which to base its decisions regarding the allocation of the agency's resources.

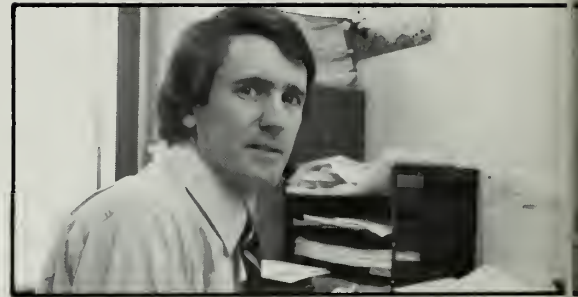
The division operates from a computerized data base which contains all relevant information pertaining to each complaint in the case inventory. One of the most useful and unusual features of the Commission's Management Information System (MIS) is its capacity to determine how much time has elapsed since activity may have taken place on a particular case. This data enables managers to isolate stagnant cases and to identify bottlenecks in the process.

Staff caseloads and production are monitored through weekly and monthly reports. With such a

Management of the Commission's information system is but one component of the Case Control Division's central planning function. The division also executes a critical review of divisional interaction and helps initiate program changes based on its evaluation.

support system, division managers are now able to identify individual staff members who may require assistance and/or supplemental training. MIS is also used to locate procedural impediments. This identification tool proved invaluable in assisting the Legal Division in reducing the Commission's case inventory by some 40 percent.

The Case Control program represents an ongoing critical review of divisional interaction designed to refine and/or replace existing procedures. These programmatic changes are normally instituted upon completion of



pilot projects. Two recent examples of such projects have significantly affected case processing. One involved the development of an internship program to supplement the Commission's full-time legal and investigative staffs; another analyzed and evaluated the use of fact-finding conferences as an investigative tool to accelerate case processing while maintaining qualitative standards.

Division of Investigations

The Division of Investigations is charged with the responsibility of receiving and investigating complaints concerning education and private and public employment practices. The Division operates through both the main office in Boston, as well as through the field units in New Bedford, Springfield and Worcester, where complaints concerning credit and public accommodations are also investigated.

In its investigations, the Division utilizes Fact-Finding conferences, Interrogatories, personal interviews and on-site visits to search out all fact surrounding the alleged discriminatory act. During the investigatory stage, the Division may provide an invaluable service to both the complainant and the respondent by airing the concerns and helping to defuse the matter. The investigator strives to both improve conditions and practices in the workplace and to assist the parties in arriving at a mutually satisfactory resolution or "Pre-Determination Settlement."

With the implementation of its Early Resolution Process, the Division of Investigations has accomplished its goal of reducing case processing time and has done so without sacrificing the quality of its investigative work.

than not there was an act of discrimination committed, or "Lack of Probable Cause." The investigator's findings are then reviewed by the Division Director and sent to the Investigating Commissioner who reviews and approves all such findings. If Probable Cause is found, the case is then sent to the agency's Legal Division for

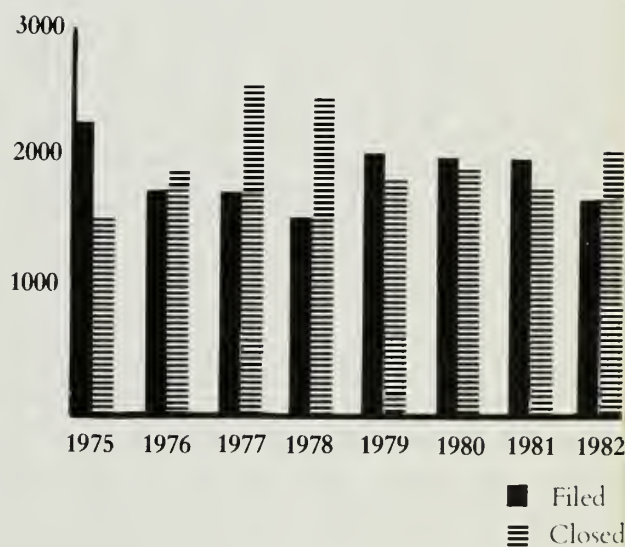
In the absence of a Pre-Determination Settlement, the investigator has the responsibility of determining whether the complaint warrants a finding of either "Probable Cause," that is, a finding that more likely

conciliation purposes.

Over the past 12 months, the investigations unit has been directly involved in helping the MCAD reduce its long-standing case backlog. With the implementation of its Early Resolution Process (ERP), the unit has accomplished its goal of reducing case processing time without sacrificing the quality of its investigative work. The division's streamlined performance in this area has been instrumental in assisting the agency to meet federal EEOC case processing standards, thus maximizing its federal funding.

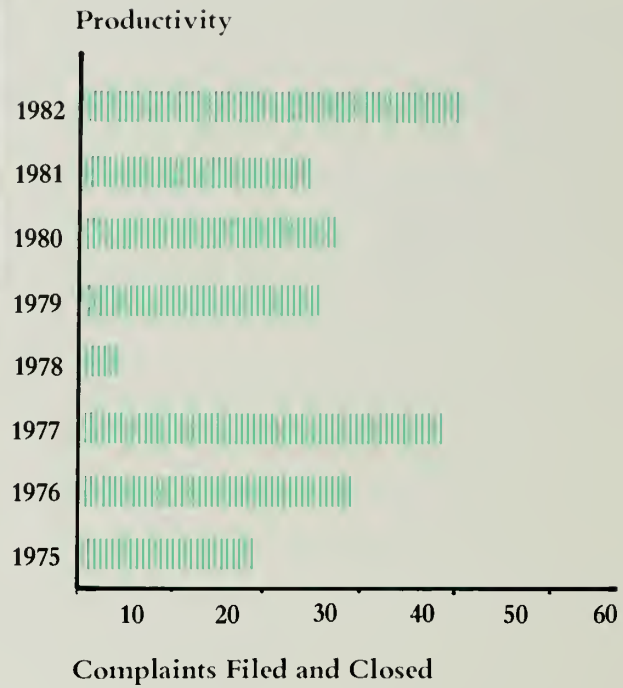
Additionally, in 1982, the division has sought to broaden the work experiences and the case accountability of its staff. One of the most successful techniques employed in this effort has been the planned rotation of

COMPLAINTS FILED AND CLOSED





“intake” and case assignments. Rather than establish a separate “intake” unit, where several investigators would be assigned to receiving complaints, the Division now assigns all supervisory personnel to an intake rotation. Under this procedure the staff member receiving or processing the complaint becomes the assigned investigator to that complaint. This technique has not only enriched the training of division personnel but has increased their professionalism.



Early Resolution Process

The Early Resolution Process (ERP) is actually a composite of several investigative techniques. In some ways it is a throwback to the late 1960's, when the Investigating Commissioner conducted his/her "informal conferences" at which both the *complainant* and *respondent* would be present. Resurrected and rejuvenated, it is used in conjunction with the interrogatory to accomplish several purposes: notably, to bring the adversaries together quickly and informally and to achieve settlement without protracted investigation and delay.

Under the Early Resolution Process, an investigation is initiated almost immediately. Within two days of filing of the complaint, a copy of the complaint is sent to the *respondent*. The notice of complaint advises the *respondent* that it will be contacted by an MCAD staff person within five days to schedule a fact-finding conference. The *respondent* is then informed as to who should be in attendance, what documents to bring, and generally, what format will be followed.

In addition to reducing the length of time it takes to investigate a case, the most significant purpose of ERP is to provide a forum for the airing of a grievance and possible settlement of the case. Every innovative change to investigative methods has focused on the necessity of bringing the parties together immediately after the complaint has been filed. It has been amply demonstrated over the years that this facilitates settlement in that damages do not continue to multiply beyond the limits of a *respondent's* ability to pay.

The ERP process also brings to light those cases where the act complained of may be unfair rather than illegal. In these cases, settlement may also be possible, as it gives the parties an opportunity to discuss the issues without blame being accessed.

“How To File a Complaint”

If you believe you have been discriminated against in employment, housing, public accommodations, credit or education, you may file a complaint in person or by mail with any of the Commission's Regional Offices. If you are unable to file a complaint in person, you may call one of the Commission's Regional Offices, explain the details and ask that a complaint be prepared and mailed to you for your review and signature.

Rule 3:02 of the Commission's Rules of Procedure specifies that a complaint must be filed within six (6) months after the alleged discriminatory act occurred.

All complaints filed with the Commission should contain the following information:

- List of names, titles, business addresses and telephone numbers of the person(s) charged with having committed an alleged unlawful discriminatory act.
- A summary of the specific acts of alleged unlawful discrimination, including dates.
- The details of any financial losses suffered as a result of the alleged unlawful discriminatory act.

Your complaint will be assigned to the Regional Office located closest to the place of business of the person(s) charged. A determination will be issued following an investigation.

If a lack of Probable Cause determination is made, you will have ten (10) days after the date of service to appeal to the Office of the General Counsel. After a preliminary hearing and review, the Investigating Commissioner may affirm, remand or reverse the finding.

If Probable Cause is found, the Commission will seek through conciliation, to secure your rights and to eliminate any unlawful discriminatory practice.

If conciliation efforts fail, your complaint will be certified for Public Hearing by the Investigating Commissioner. Following Public Hearing, a decision will be issued by the Hearing Commissioner assigned. If the Commissioner finds that the discrimination took place, a “Cease and Desist” order will be issued, as well as order equitable and monetary awards. The Commission will go to court whenever necessary to enforce “Cease and Desist” orders.

Legal Division

1982 was a year of change and improvement for the Commission's Legal Division. By the end of 1981, the legal staff had been reduced to three attorneys and was facing a considerable backlog of cases requiring its immediate attention. During 1982, however, this situation was substantially turned around.

Perhaps the most important step taken was that of hiring a new General Counsel and the expansion of the division's legal staff. Its current staff of nine attorneys, including for the first time two who specialize in housing discrimination matters, now possesses a wide range of experiences in all aspects of civil rights law and litigation.

In supervising and coordinating the work of the Commission's nine lawyers and several interns, General Counsel Edward Doocey has emphasized streamlining and the use of time-tested legal techniques for processing cases. As a result, the Legal Division has earned a well-

deserved respect among the Commonwealth's civil rights legal fraternity.

A close working relationship between Commissioners and Commission lawyers has enabled the Commission to realize or exceed many

quantitative and qualitative goals. Major accomplishments of the legal division in 1982 included the following activities:

- Issued 31 hearing decisions and decisions of the Full Commission. This very productive session represents a record number of decisions promulgated in a single year.

- Awarded in excess of \$300,000 to Complainants.
- Conducted 26 full adjudicatory public hearings.
- Held five Calls of the List (four in Boston and one in Springfield) which moved an additional 132 cases along in the process.
- Conciliated 73 cases for a total recovery to Complain-



ants of \$275,000.

- Reduced the backlog of cases in the division from 357 to 213, with reduction particularly targeted towards older cases.
- Instituted a series of management control systems to more closely track and evaluate legal case processing and attorney performance.

Among the thirty decisions issued by the Commission, in the past year, were a number of cases which dealt with significant legal issues.

Bowen v. Colonnade Hotel: A Full Commission decision which set forth a new standard for proving discrimination through deterrence, and back pay, front pay and emotional damages.

Ward v. Ford, et al: A Full Commission decision affirming the Commission's inherent discretionary power to order Respondents to advertise apartment vacancies in local newspapers.

Gonsalves v. Plymouth School Dept.: A Full Commission

The Legal Division's current staff of nine attorneys now possesses a wide range of experiences in all aspects of civil law and litigation. It has earned a well-deserved respect among the Commonwealth's civil rights legal fraternity.

decision affirming a Hearing Commissioner's inherent discretionary power not to deduct unemployment benefits from back pay awards.

Heath v. Town of Greenfield Police Dept.: A Single Commissioner decision finding that a female reserve police officer had been denied promotion and equal terms and conditions of employment on the basis of sex, and was subsequently retaliated against for filing a complaint; and ordering Respondent to pay her approximately \$32,000.00 plus interest for lost wages and emotional distress, and to hire three women to the permanent force.

Jones v. Liberty Mutual, et al: A Full Commission decision affirming the finding of a Hearing Commissioner that Respondent violated Complainant's civil rights by maintaining separate benefit plans for males and unmarried females and thereby charging an additional amount for pregnancy coverage.

Baker v. Collazo: A Single Commissioner decision holding that the presence of lead paint in an apartment is not a defense to a complaint of discrimination in housing on the basis of the apartment seeker having a child.

Rafferty v. Triple A Restaurant: Decision of a Single Commissioner finding that Respondent restaurant violated the state's public accommodation law by refusing to serve a blind customer accompanied by a seeing-eye dog.

Emmons v. Codex Corp.: A Single Commissioner decision holding that a claim of sexual harassment is actionable under the state's civil rights law.

In addition to the in-house legal case load, the Legal Division staff also represents the Commission in a number of court actions. These include:

Sarni v. MCAD — Appeal of MCAD decision raising

issues on race as a bona fide occupational qualification. Decision issued by the Supreme Judicial Court affirming the Full Commission decision.

U.S. Jaycees v. MCAD — Appeal of MCAD finding that U.S. Jaycees is a place of public accommodation. Oral argument presented to Supreme Judicial Court in 1983.

Chaiken v. MCAD — Superior Court review.

Buckley Nursing Home v. MCAD — Superior Court review.

Plymouth School Department v. MCAD — Superior Court review.

Town of Framingham v. MCAD — Superior Court review.

Taunton Redevelopment Authority v. MCAD — Superior Court review.

Drohan v. MCAD — Superior Court review.

Liberty Mutual v. MCAD — Superior Court review.

University Hospital v. MCAD — Declaratory judgment action — Superior Court.

State Mutual v. MCAD — Declaratory judgment action — Superior Court.

Public Sector Division

The Public Sector Division (PSD) has three operating units: the *Housing and Public Accommodations Unit*, the *HUD Grant Unit*, and the *Civil Rights Review Unit*.

As a consequence of extreme budgetary constraints in 1981-1982, the Commission was compelled to transfer six employees out of Review Units and into Investigative Units throughout the Commission and to eliminate or merge important programs.

Thus, for example the Compliance Unit was abolished and several of its functions transferred to the Civil Rights Unit.

A. Housing and Public Accommodations Unit

1981-1982 witnessed a 30% increase in the number of Housing Complaints filed with the Commission. This unprecedented increase is attributed to two (2) factors:

1. The Commission's growing reputation for effective and timely Housing Complaints; and

2. An extraordinarily tight housing market with extreme competition in Housing Units.

With the assistance of approximately \$287,000 in HUD Fair Housing Assistance Program support monies, the Commission has been

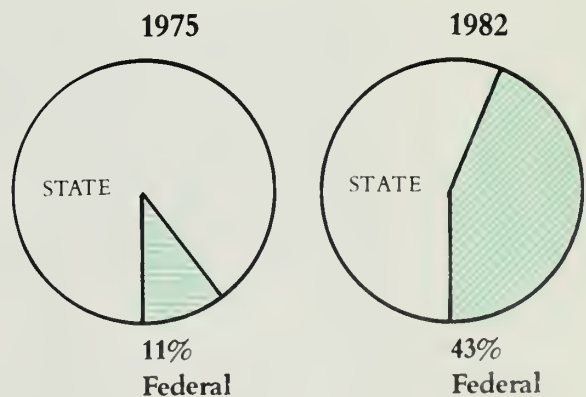
able to expand its housing investigative staff to provide more efficient and productive services. In 1982, the Commission received 302 housing complaints and closed 332 housing complaints. Approximately two-thirds of these complaints involve the Title VIII allega-

tions and were therefore dual-filed with HUD. Under the dual-filing process, the Commission assumes the federal enforcement role as well. The Commission is, in turn, compensated by HUD for its performance in the investigation of fair housing complaints. The average time required to process a housing case in 1981-1982 was sixty (60) days, although the vast majority of the Commission's housing case investigations were completed within thirty (30) days.

The Commission's decision to reallocate resources into its Housing Complaints Investigation Program resulted in its meeting or exceeding all Federal Performance Standards. It, thus, increased its number of Probable Cause Determinations by 4%; decreased its number of Lack of Probable Cause Findings by 29.3%; and increased its Pre Determination Settlements by 19.3%.

These were years of dramatic change and contrast within the Public Sector Division. 1981-1982, for instance, saw more than a 30 percent increase in housing complaints, while a reduced Civil Rights Review staff continued to monitor contract performance reviews of more than 140 Cities and Towns.

Percentage Growth of Federal Funding



Public Accommodations

The number of public accommodations complaints filed by the handicapped with the Commission continued to increase. The Commission initiated work on proposed handicapped guidelines during the calendar year.

B. HUD Grant Unit

The MCAD has a well earned reputation for its success in acquiring federal grant monies. Without this important effort, the Commission could not have implemented an effective Housing Program with the less than \$75,000 allocated to it by the state legislature.

In 1982, the Commission successfully competed for two grants, valued at \$300,000. This represents the largest grant of money ever allocated by HUD to a state or local Fair Housing Enforcement agency. In addition, the Commission successfully negotiated two HUD Processing Complaints valued at \$200,000.

Performance Requirement

Federal Grant monies were used to:

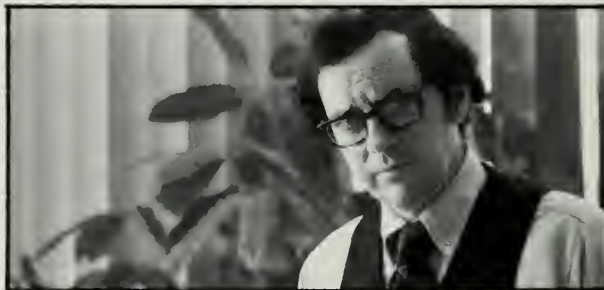
1. Hire badly needed Housing Attorneys and Investigators.
2. Develop and publish the first Systemic Investigation Manual for State and Federal use ever produced by a state agency.
3. Initiate a Systemic Investigation Housing Discrimination Program Contract with seven community agencies to provide Fair Housing Complaint Counseling and Intake Services to area residents. Conduct four training conferences for advocacy groups and representatives from real estate agencies.

C. Civil Rights Review Unit

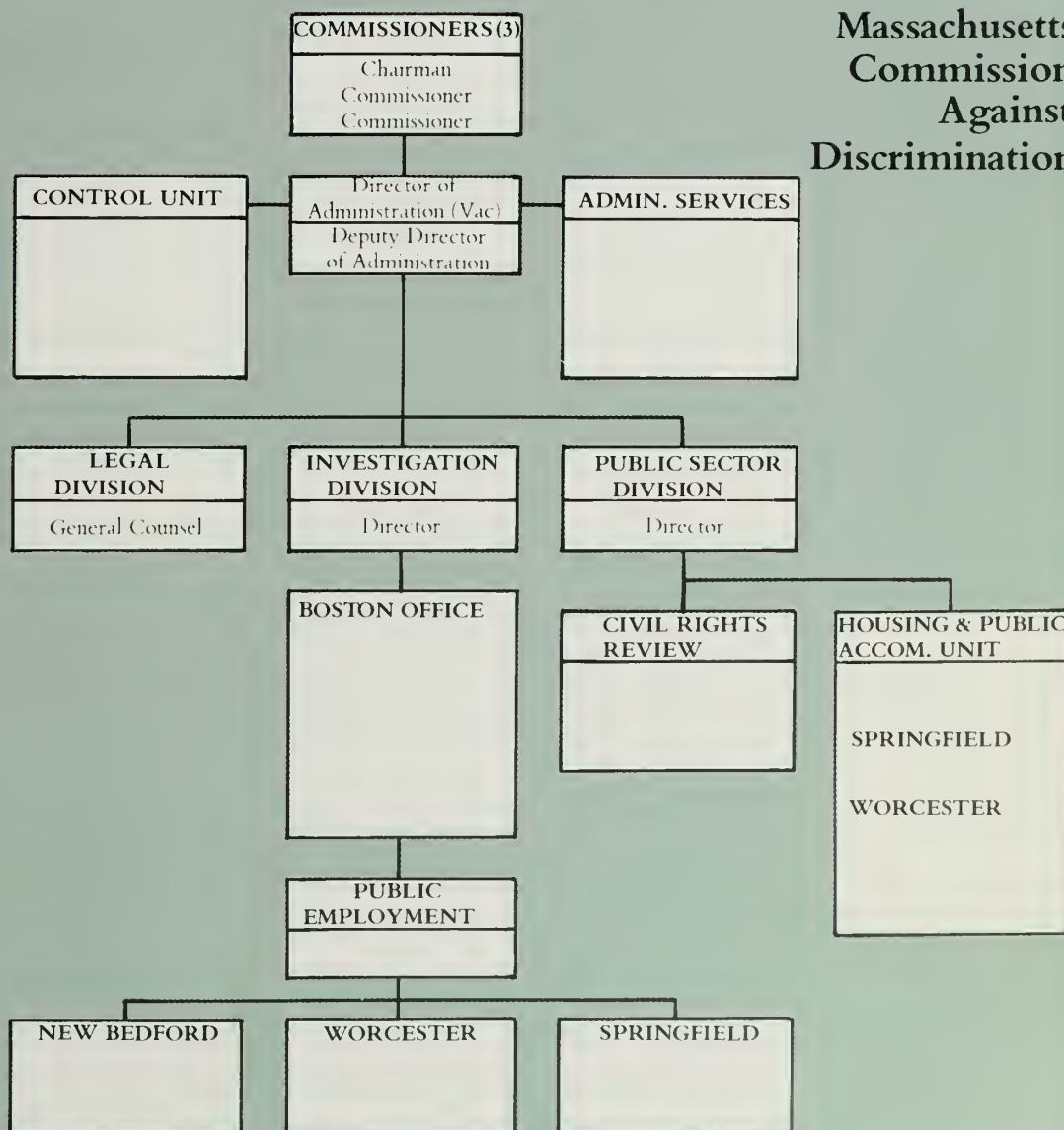
The Civil Rights Review Program has historically represented an important aspect of the Commonwealth's

overall civil rights effort. It is, in fact, the state's most direct link between its Affirmative Action Review Policies and the various municipalities. Therefore, underfunding of this vital program affects thousands of citizens who look to the Commonwealth for Civil Rights relief.

In addition, underfunding adversely impacts upon the many cities and towns which annually turn to the Commission for technical assistance necessary to successfully compete for federal and state aid. In 1981-1982, the Civil Rights Review Unit reviewed \$200 million dollars worth of municipal grant applications, but was limited in its capacity to provide further technical assistance to these municipalities or to fully perform Compliance Enforcement Service to the more than 250 cities and towns as mandated by state policies.



Massachusetts Commission Against Discrimination





MCAD Advisory Board

Pursuant to M.G.L., Chapter 6, §48, "The Governor shall appoint an advisory board to the Commission, consisting of not less than twenty-one persons..." Members of the Board are to represent a broad spectrum of the citizenry of the Commonwealth including minority racial, ethnic and linguistic groups, women, elderly and handicapped persons, members of the business community in the areas of housing, banking, education and labor, and members of the local and regional advisory boards.

The Board functions as both an advisor to the Commission and the Governor in matters of policy affecting the Commission and as a monitor of the Commission's programs and policies.

During 1981 and 1982, the MCAD State Advisory Board and the Boston Area Advisory Council met jointly. The Boards' activities included a continuous review of legislation affecting the Commission as well as lobbying efforts on both legislation and the Commission's budget, and a thorough review of the Commission's activities including case statistics (filed and closed), the early resolution process, and the public hearing process.

A revitalized Hampden-Hampshire Advisory Council was established in 1982. The Council has standing committees in the areas of legislation, budget review, the complaint process, and municipal compliance.

Multi-Cultural Awareness Task Force

The Multi-Cultural Awareness Task Force was created in June of 1982, through the efforts of Commissioner Kosberg, as an expression of the Commission's concern over the increasing numbers of racial and anti-semitic incidents occurring across the Commonwealth.

Composed of federal, state and local officials, including the Civil Rights Division of the Attorney General's Office, the Massachusetts Department of Education, the Community Relations Service of the Department of Justice, and community and civil rights organizations, educators, and other concerned citizens, the Task Force has been working towards both community-wide and educational strategies in dealing with this problem.

As a first step, on October 27, 1982, a Civic Leadership Conference on Racial and Anti-Semitic Violence, Vandalism and Hatred was held at the State House. More than 300 municipal leaders attending (Mayors, Boards of Selectmen, School Committee chairs, and School Superintendents), representing more than 100 cities and towns, participated in a consciousness raising session, designed to give them both facts and strategies.

As part of its "Next Steps Program," the Task Force is presently focusing its energies on offering specialized assistance to communities in the areas of establishing multi-cultural education programs, training police, school administrators/teachers, and municipal officials, and establishing local human rights commissions.



Future Directions

The Commission will continue to review and revise its case processing techniques to insure the highest quality and most efficient services attainable. Likewise, it will continue to vigorously pursue state and federal grants to supplement its tight budget.

In the years to come, the Commission will continue to review and revise its case processing techniques to insure the highest quality and most efficient services attainable under its operational budget.

As a result of the Commission's highly successful 1981-1982 efforts to eliminate its enormous backlog of post determination cases, key Commission staff members will be available to recodify the Commission Rules of Procedure and guidelines for maternity leave, sexual harassment and affirmative action.

The Civil Rights review program will be reprioritized and restructured to insure greater efficiency. Technical assistance to the Commission staff and the agencies of the Executive Branch will continue to be a key element of this vital program.

Blatant acts of violence against Blacks, Hispanics and Jews continue to plague our educational system. The Commission will therefore continue to expand its multicultural awareness program.

No agency can effectively function unless it has a sound financial basis. Therefore, the Commission will thus continue to vigorously pursue state and federal grants to supplement its tight budget.

Statutory amendments will be sought to improve the Commission's efficiency and expand the rights of all our citizens.

Programs to train realtors, businessmen, bankers, community activists and members of local bar associations in civil rights law will be designed and implemented as the budget so allows.

Massachusetts Commission Against Discrimination

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145 State Street	Springfield, MA 01103	413/739-2145
222 Union Street	New Bedford, MA 02740	617/997-3191
75A Grove Street	Worcester, MA 01605	617/752-2272

COMMONWEALTH OF MASSACHUSETTS

COMMISSION

AGAINST DISCRIMINATION

State Library of Massachusetts
State House, Boston

ANNUAL REPORT

JULY 1, 1983 TO JUNE 30, 1984

ALEX RODRIGUEZ, CHAIRMAN

MARGOT P. KOSBERG, COMMISSIONER

FREDERICK A. HURST, COMMISSIONER

MR
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1983/84
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A LONG HISTORY

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C-2MORE THAN A CENTURY PASSED

Massachusetts has been a forerunner in the fight against discriminatory practices. More than a century has passed since the Commonwealth took its first step against discrimination. In 1855, six years before the Civil War, the General Court (the state legislature) passed a law to prohibit "any bias on account of race, color or religious opinions of the applicant or scholar in the public school system." Ten years later, the General Court enacted the first state law in the country that outlawed discrimination in public accommodations. In bold language, the law states that:

No distinction, discrimination or restriction on account of color or race shall be lawful in any licensed inn, in any public place of amusement, public conveyance or public meeting in the Commonwealth.

EMPLOYMENT: "NO IRISH NEED APPLY"

Although Massachusetts may have been one of the first states to prohibit discrimination in public education and public accommodations, discrimination in employment was not only legal but common practice in Massachusetts well into the twentieth century.

"No Irish Need Apply" was as common in late 19th century employment advertisements as "Equal Opportunity Employer" is today. However, at that time, there was no law in Massachusetts to prevent it. Many first and second generation Americans were not hired, or were denied access to better jobs, simply because of their national origin. In spite of these laws and others passed since those times, discrimination still exists.

THE FIRST "MCAD": THE MASSACHUSETTS FAIR EMPLOYMENT PRACTICES COMMISSION

In 1944, a special committee of the state legislature was formed to investigate discrimination in employment in Massachusetts. Many Massachusetts legislators and their families had themselves experienced job discrimination as first generation Americans in the early years of the twentieth century. From personal experience, they knew what it meant to be discriminated against. This special committee recommended this important law, which was passed in 1946 by the General Court:

It is hereby declared the public policy of the Commonwealth that it is necessary to protect and safeguard the right and opportunity of inhabitants of this Commonwealth to obtain, hold and continue in the unabridged enjoyment and benefit of gainful employment without discrimination or abridgement because of race, religion, color, national origin or ancestry. It is likewise recognized that both justice and public interest demand a policy to give to persons of equal ability, regardless of race, religion, color, national origin or ancestry, fair and equal opportunity to obtain and to hold gainful employment, and for advancement therein. (Massachusetts General Laws, Chapter 368, Sec. 4)

It was clear that an enforcement agency was also needed. In establishing the Fair Employment Practices Commission, Massachusetts became the third state, preceded only by New York and New Jersey (1945), to create an agency to enforce civil rights legislation. The primary functions of the new agency were "to receive, investigate and pass upon complaints alleging discrimination in employment because of race, color, religious creed, national origin or ancestry." The Commission was directed to "endeavor to eliminate the unlawful employment practice complained of, by conference, conciliation and

persuasion." Offending employers were to be ordered to "cease and desist" and to take affirmative action in redressing their discriminatory acts. The name of the Commission was changed to the Massachusetts Commission Against Discrimination (MCAD) in 1950.

THE MCAD IN THE 60'S, 70'S AND 80'S

Since 1946, the responsibilities of the MCAD have been greatly enlarged to cover not only discrimination in employment and public accommodations but also in housing, credit, and education. The categories of people that the MCAD serves now include people between the ages of 40 and 65, women or men discriminated against because of their sex, pregnant women, handicapped people, persons with children in public and private housing, and welfare recipients in housing. These jurisdictional changes are the result of new laws and new court decisions in the field of civil rights, both at the federal and the state levels.

During this period of expanding responsibilities, the MCAD's work load increased dramatically. In the eighteen years between December 1946 and December 1964, the MCAD processed 4,865 complaints of all types. In the seventies, the number of complaints averaged about 1,700 a year, six times the average annual caseload of the Commission's first eighteen years. Also, in the early years of the Commission, the complaints focused on discrimination against Blacks. In the 70's, however, the nature of complaints broadened to include significant additional categories in greater numbers, reflecting the changing focus of antidiscrimination legislation.

The most recent extension of jurisdiction occurred in March 1984 when the new law protecting handicapped persons from employment discrimination took effect. By year-end, the full

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effect of this statute was unknown, as no clear patterns had emerged. Yet, even limited experience with these cases indicates they will significantly impact the agency's scarce resources. At the midpoint in the 1980's, the average annual case intake has already increased by 10 percent from 1,700 to 1,870 cases per year.



THE MCAD TODAY

THE MCAD COMMISSIONERS

The Commission itself is composed of three full-time commissioners appointed by the Governor. They serve three-year staggered terms to maintain continuity in policy and in agency direction. Each of the commissioners has responsibility for a particular geographic region of the state, as prescribed by the 1976 reorganization legislation. As a group, the commissioners decide matters of basic policy and guide the operation of the agency.

Commissioner Leon A. Brathwaite II, a graduate of Northeastern University was appointed to a three-year term as Chairman in March of 1981. He left the Commission when his term expired in March of 1984.

Commissioner Alex Rodriguez, a graduate of Goddard College and a former Loeb Fellow at Harvard University, previously served as a commissioner from 1977 to 1981. Appointed to a three-year term as commissioner in 1984, he has been restoring the positive image of the agency amongst the populace it serves, as a forceful spokesman for the issues of the day.

Commission Margot P. Kosberg, a graduate of Western Reserve University and Boston University School of Law, is past president of the Massachusetts Association of Women Lawyers. She is responsible for the Commissions activities in southeastern Massachusetts including the New Bedford office and the Cape. Ms. Kosberg was appointed in September of 1981 to fill out the unexpired term of Sam Stonefield and reappointed to a three-year term in March of 1982.

Commissioner Frederick A. Hurst, a graduate of Howard University and DePaul University Law School, is an attorney from Springfield, Massachusetts. He is responsible for western Massachusetts activities in the Springfield and Worcester offices. Mr. Hurst was appointed in March, 1984 to fill a two-year unexpired term of Kenneth J. Cote, Jr. who had served since 1981.

AGENCY MISSION

The mission of the Massachusetts Commission Against Discrimination (MCAD) is to promote equal opportunity for all persons in the Commonwealth in the areas of employment, housing, education, credit, and public accommodations by:

- (1) The enforcement of the state's laws prohibiting discrimination on account of race, color, creed, sex, national origin, ancestry, age, handicap status, marital status, veteran status, criminal record status, having children, or receiving public assistance;
- (2) The promotion of educational information concerning the antidiscrimination laws;
- (3) The systematic review and revision of the employment practices of cities and towns within the Commonwealth to ensure affirmative action in employment for minorities and women;
- (4) The review and the revision of the employment practices of state agencies and of state contractors to ensure affirmative action in employment for minorities, women, and handicapped persons.

DIVISION OF INVESTIGATIONS

The Division of Investigations' primary function is to investigate complaints alleging unlawful discrimination in employment and educational practices.

During fiscal year 1984, the Commission received a total of 1,937 complaints as compared to 1,802 in fiscal year 1983 and closed 2,186 complaints as compared to 2,047 in 1983.

While fiscal year 1984 provided less financial relief for complainants than 1983 (\$648,105. in 1984 as opposed to \$1,219,130. in 1983), more complainants received settlements prior to a finding (367 in 1984 as opposed to 330 in 1983).

On December 6, 1983, Governor Michael S. Dukakis signed into law Chapter 553 of the Acts of 1983. This statute prohibits unlawful discrimination against handicapped persons in the area of employment. The MCAD is charged with enforcing this legislation.

The handicap law took effect on March 5, 1984, and there is every indication from current filing figures that this category will give the Commission an additional 180 cases per year to investigate.

In order to ensure that handicapped complaints are promptly addressed and investigated in a timely manner, an increase in staffing will be absolutely necessary. Unlike Title VII, Title VIII, and age discrimination cases in which there is similar federal jurisdiction and for which the Commission has contractual agreements with the responsible federal agencies yielding per case payments, in handicap

cases there is no similar federal jurisdiction; therefore, there is no possibility of payments from any federal agency for processing handicap cases and state funding must bear the total cost of enforcement.

The Division of Investigations, in addition to the in-house informational and referral assistance it offers to the general public, provided investigators for public speaking engagements at the request of various groups interested in the jurisdictional areas and investigative techniques used by the Commission in processing complaints. ,



PUBLIC SECTOR DIVISIONFair Housing Enforcement Program

The MCAD Fair Housing Enforcement Program continued to expand during the year. The agency's competitive grant application, filed with the U.S. Department of Housing and Urban Development, was once again ranked first of all grant applications filed by over 50 state and local agencies. MCAD initiated a major testing program to determine the level of racial discrimination in broker-controlled private rental markets in the cities of Cambridge and Somerville. The purpose of this systemic testing program was (1) to discover the extent and types of discrimination existing in these two communities and (2) to identify and bring enforcement action against those rental agents who violate fair housing laws.

This extensive testing effort revealed that discrimination against blacks was widespread. Nine of the twelve agencies investigated appeared to violate one or more fair housing laws. The forms of discrimination are subtle. The illegal practices included denial of availability, steering, and quoting adverse terms and conditions of housing.

In September 1983, MCAD charged nine real estate agencies and twenty-one rental agents with violations of the law. Following full investigation, eight of nine agencies and seventeen of the twenty-one rental agents were found to be in apparent violation of the law, and probable cause findings were issued. Following failure to conciliate, the majority of the complaints against both agencies and agents were certified for public hearing.

Based on the quality of evidence obtained in the systemic enforcement program, the United States Department of Justice in Washington asked the MCAD to defer to its investigation

and enforcement action in the federal courts on three of the cases. MCAD thus became the first state agency in the country to enter into a work-sharing Memorandum of Agreement with the Department of Justice to provide for joint federal and state fair housing enforcement action.

In addition to the Cambridge/Somerville activity, MCAD also conducted systemic investigations of a number of other real estate agencies in conjunction with the Boston Fair Housing Commission and the Department of Housing and Urban Development. Complaints have also been initiated and investigated against public housing authorities in the Commonwealth.

Individual Complaint Enforcement Activity

The number of complaints filed with MCAD continued to increase during the year. The expansion in housing complaint intake for individual charges is at the rate of 22 percent per year. It is anticipated that by the end of FY'85 MCAD will be processing approximately 450 housing complaints per year. The agency also receives funding as a consequence of a work-sharing agreement with HUD for the processing of Title VIII complaints. MCAD is slated to receive \$140,000 from HUD for this purpose. During fiscal year 1984, approximately 12 percent of the complaints resulted in findings of probable cause and 30 percent resulted in pre-determination settlements with the benefit to the complainants. The balance of the complaints resulted in lack of probable cause, lack of jurisdiction, or administrative closures. The financial awards to complainants increased substantially during this year.

Civil Rights Review Program

During the past year, the staff of the Civil Rights Review Program continued to process compliance reviews of discretionary grant applications from municipalities; to provide technical assistance; and to monitor and oversee the development and implementation of municipal affirmative action plans in the areas of employment, fair housing, and contract compliance and the Minority Business Enterprise Program (MBE).

Approximately 180 cities and towns, with populations in excess of 10,000, are actively pursuing the development and implementation of affirmative action plans.

MCAD staff conducted approximately 800 reviews of grant applications from municipalities, principally with the Executive Office of Environmental Affairs. The MCAD is currently negotiating, and anticipates development of, a full review program with the state Executive Office of Communities and Development during the 1985 fiscal year.

LOOKING AHEAD

MCAD has been notified that its third grant year application of \$150,000 for systemic housing enforcement was again ranked as the highest competitive application received. As a consequence, the systemic testing and enforcement program will continue throughout fiscal year 1985.

HUD has also selected MCAD to be one of the two primary presentors systems, methodology, and outcome, utilizing systemic testing and enforcement procedures, at a national training conference to be conducted by HUD in December 1984. MCAD will, as a consequence of this seminar, present papers and develop, for the benefit of enforcement agencies at the

state and local level throughout the country methodology, systems, and accomplishments achieved under the systemic program.

Given the extraordinary rate of discrimination which the systemic program has demonstrated exists in housing markets in the Commonwealth, a request for a budget increase has been submitted to the legislature. At present the state provides a meagre \$70,000 in funding (compared to \$355,000 received from HUD) for fair housing enforcement statewide. With a discrimination rate of 60 to 70 percent based on color, it is apparent that MCAD efforts will not succeed until additional state resources are made available.

With the addition of four staff persons in the Civil Rights Review Program, who will be available in January of 1985, MCAD anticipates an expansion of that program's activities. Included in the program expansion will be a reconstitution and revitalization of the affirmative action program in the construction industry in the Commonwealth. Additionally, as a consequence of the program's staff expansion, a new relationship will be developed with the Executive Office of Communities and Development and potentially with other secretariats.

CASE CONTROL DIVISION

The Case Control Division bears the primary responsibility for effective management of the agency's case inventory. It performs the vital function of providing the Commission and its managers with accurate, reliable, and timely information upon which to base its decisions regarding the allocation of the agency's resources.

The division operates from a computerized data base, which contains all relevant information pertaining to each complaint in the case inventory. One of the most useful and unusual features of the Commission's Management Information Systems (MIS) is its capacity to determine how much time has elapsed since the last activity took place on a particular case. This data enables managers to isolate stagnant cases and to identify bottlenecks in the progress.

Part of the process includes a work-sharing relationship with MCAD's federal counterpart, the Equal Employment Opportunity Commission (EEOC). To avoid duplication of effort, MCAD refers cases to EEOC for investigation. Upon completion the results of EEOC's efforts are reviewed and, in most cases, adopted. Case Control has recently been used to monitor this process as well as the agency's internal operation. In fiscal year 1974, the division identified a bottleneck of over 450 cases at EEOC. Through a reallocation of resources, that number had been reduced almost 33 percent by year's end.

Staff caseloads and production are monitored through weekly and monthly reports. With this support system, division managers are now able to identify individual staff members who may require assistance and/or supplemental training. MIS is also used to locate procedural impediments.

The Case Control Division performs on an ongoing basis critical review of divisional interaction designed to refine and/or replace existing procedures. During fiscal year 1984, the division took a close look at the agency's data processing needs. Much of the agency was still operating with manual support systems. Even the agency's MIS was becoming obsolete by industry standards. As a result, the ground work has been laid for the introduction of microcomputers into the agency in fiscal year 1985. In addition, Case Control completed an analysis of ways to upgrade the MIS which will result in the agency "going on-line" in fiscal year 1985. On-line capability will improve the accuracy and timeliness of information by 60 percent. This capacity should enhance our ability to provide a sophisticated analysis of trends in the civil rights field.

LEGAL DIVISION

Nineteen eighty-four was a year in which the Commission's legal division consolidated and continued earlier gains. The trends established during 1982, the first year of the administration of current General Counsel Edward C. Doocey, progressed unabated.

The Legal Division, consisting of the General Counsel, seven staff attorneys, one clerical support staff person, and several part-time student interns, contains the talent, experience, and skills, including multi lingualism, necessary to deal with all aspects of civil rights law, litigation, and service to all segments of the Commonwealth's population.

These resources have enabled the Legal Division, working in close harmony with the three MCAD Commissioners, to achieve new high levels of performance in the three key areas of: (1) hearings and decisions, (2) court litigation, and (3) case processing. Specific major accomplishments include the following:

Assisted the Commissioners in issuing a total of 47 decisions, including both hearing decisions and full Commission decisions, far outstripping the previous record of 34 such decisions set in 1983. Each of these decisions constitutes a final (albeit reviewable), dispositive adjudication on the merits of a discrimination case. In conformance with Supreme Judicial Court opinions, each of the hearing decisions includes a complete set of findings-of-fact including all subsidiary findings-of-fact reflecting a complete consideration of all evidence presented at hearing. Moreover, each such hearing decision grants effective relief, including, in cases where the complainant prevails and to the extent the evidence so warrants, reinstatement, promotion, adjustments in working conditions, cease-and-desist orders, prospective affirmative

action relief, admission to housing or a place of public accommodation, back pay, front-pay, damages for lost housing opportunities, emotional damages, and interest.

These decisions made or affirmed awards totalling, in the aggregate, \$315,420.

Due to the record number of decisions in 1984 as well as the high number of decisions in 1983, the legal staff was able to close 30 cases in which such a decision had been rendered. This figure represents a continued steady increase since 18 such closures were achieved in 1980, the first year for which such data is available. This figure of 30 closures includes many cases in which the parties immediately abided by the decision of the Hearing Commissioner. In other cases, the Commission had to await vindication on court appeals. In all of these cases, the Commission's trial process was implemented and the principals of antidiscrimination law were visibly effectuated. The Commission's willingness to press these cases to a final conclusion creates the credibility necessary to secure the vast number of voluntary settlements which the Commission achieves.

As a predicate to the outstanding number of decisions issued, a total of 18 full public hearings (trials) were held during the fiscal year. This, again, represents continued improvement. Each of these hearings was presided over by one of the MCAD Commissioners, not by outside hearing officers. Thus, the Commission avoided procedural uncertainties and maintained full control over the administrative construction and vindication of the anti-discrimination law. Each of these hearings is conducted with the full panoply of due process rights and procedural protections associated with court proceedings, including examination, cross-examination, compulsory process, recognition of evidentiary privileges, and compliance with the rules of evidence.

The Commission's court work is not restricted to appeals and petitions regarding final Commission decisions. Special actions are sometimes initiated by or against the Commission in court on an emergency basis

before the Commission process has run its course. Nine such cases were resolved in the courts during fiscal year 1984, either by court ruling or by voluntary dismissal. All of these cases were unequivocally resolved in the Commission's favor. In sum, out of a total of 18 court decisions, the Commonwealth prevailed on 17 and can be proud of its record in all.

A total of 192 cases were closed by the Legal Division during fiscal year 1984. This record surpasses all previous closure records.

Progress continues to be made in reducing the backlog of pending cases in the Legal Division. There was an 11 percent drop in the number of cases pending at the end of the previous fiscal year, and there was an aggregate 41 percent drop from the number of pending cases docketed at the end of calendar year 1980. It should be noted that the backlog includes a number of cases in which action has been suspended due to ongoing proceedings in other forums. These cases are essentially out of the Legal Division's control.

The 192 closures achieved by the Legal Division in fiscal year 1984 included cases in which plaintiffs received the aggregate amount of \$355,279. This figure does not include amounts awarded at hearings but now under appeal.

ADMINISTRATIVE SUPPORT DIVISION

The Administrative Support Division provides office support for the Commission at its Boston headquarters and at three locations across the Commonwealth. The Division is directly responsible for the daily management of personnel, including payroll functions, purchasing, accounting, maintenance of physical plant, and other support activities. Another prime responsibility of the division is that of developing the Commission's annual state and federal budgets. This administrative area has become increasingly more complex with the growth of the federal contracts awarded to the Commission, while, at the same time, the state legislature has imposed new procedures and controls for handling federal monies. These increased workload demands may require augmentation of the division's personnel in the near future.

In addition to meeting daily needs of the Commission's statewide operation, the administrative support division provides liaison to a number of state and federal agencies and departments. Included among these are the state offices of Administration & Finance, Budget Bureau, Personnel Division, Group Insurance Commission, Purchasing Division, State Treasurer, Office of the Comptroller, the Senate and House Ways and Means Committees, and the federal Equal Employment Opportunity Commission.

Another continuing responsibility of the Administrative Support Division is that of providing informational services for the Commission. This function includes the development and distribution of brochures, posters, and other communications to the Commission's field offices, community and municipal centers, public service and neighborhood groups, and the business community.

MCAD STATISTICAL SUMMARY

	<u>1980</u>	<u>1982</u>	<u>1982</u>	<u>1983*</u>	<u>1984*</u>
CASES FILED	1964	2009	1641	1802	1937
CASES CLOSED	1867	1767	2145	2064	2187
YEAR END INVENTORY	2251	2563	2163	2114	1893

* * * * *

CASE CLOSURES BY DISPOSITION

	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983*</u>	<u>1984*</u>
LACK OF PROBABLE CAUSE	918	802	1101	997	978
LACK OF JURISDICTION	78	74	81	77	164
WITHDRAWN	172	192	173	176	157
SETTLEMENT	280	334	386	336	398
ADMINISTRATIVE	214	217	228	282	292
CONCILIATED	137	48	73	60	58
STATE COURT	50	79	86	96	110
FINAL ORDER	18	21	17	40	30
	1867	1767	2145	2064	2187

* FISCAL YEAR

CASE CLOSINGS

FY 84

	<u>LOPC</u>	<u>LOJ</u>	<u>W</u>	<u>PDS</u>	<u>ADM</u>	<u>CON</u>	<u>478</u>	<u>ORD</u>	<u>TOTAL</u>
JULY	92	31	17	26	15	9	1	8 -	199
AUG.	77	17	19	25	19	3	13	1 -	174
SEPT.	69	15	4	35	19	2	4	3 -	151
OCT.	66	15	10	23	17	7	5	1 -	144
NOV.	87	18	35	67	30	9	7	2 -	255
DEC.	106	7	12	47	25	2	9	2 -	210
JAN.	63	9	7	32	67	6	15	0 -	199
FEB.	76	10	12	31	40	2	8	1 -	180
MAR.	99	9	7	15	10	4	1	3 -	148
APR.	66	10	10	23	17	3	8	4 -	141
MAY	64	9	16	25	16	5	29	4 -	168
JUNE	113	14	8	49	17	6	10	1 -	218
TOTALS	978	164	157	398	292	58	110	30	2187

KEY:

LOPC - Lack of Probable Cause

ADM - Administration

LOJ - Lack of Jurisdiction

CON - Conciliated

W - Withdrawn

478 - Removed to State Court

PDS - Pre-Determination Settlement

ORD - Final Orders

BUDGET REVIEW BY FISCAL YEAR

1975 - 1984

Budget
STATE
FEDERAL
TOTAL

<u>1975</u>
979,000
125,000
1,104,000

<u>1979</u>
1,393,000
975,000
691,000
1,666,500

<u>1980</u>
1,000,000
393,000

<u>1981</u>
1,055,000
554,000

<u>1983</u>
1,609,000
1,005,000
1,054,000
2,059,000

<u>1982</u>
933,000
703,000
1,636,000

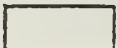
<u>1984</u>
1,138,00
1,009,00
2,147,00

<u>1976</u>
731,000
185,000
916,000

<u>1977</u>
785,000
320,000
1,105,000

<u>1978</u>
795,000
245,000
1,040,000

MCAD STAFFING LEVELS

1969 To 1974	FEDERALLY FUNDED GRANT POSITIONS	
	TOTAL FEDERAL AND STATE FUNDED POSITIONS	

1969



65

1970



70

1971



93

1972



94

1973



98

1974



100

MCAD STAFFING LEVELS

1975
TO
1980

FEDERALLY FUNDED GRANT POSITIONS
TOTAL FEDERAL AND STATE FUNDED POSITIONS



1975



9



75

1976



13



60

1977



18



65

1978



19

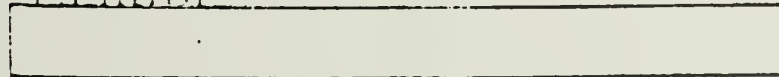


66

1979

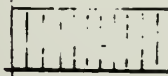


16



65

1980

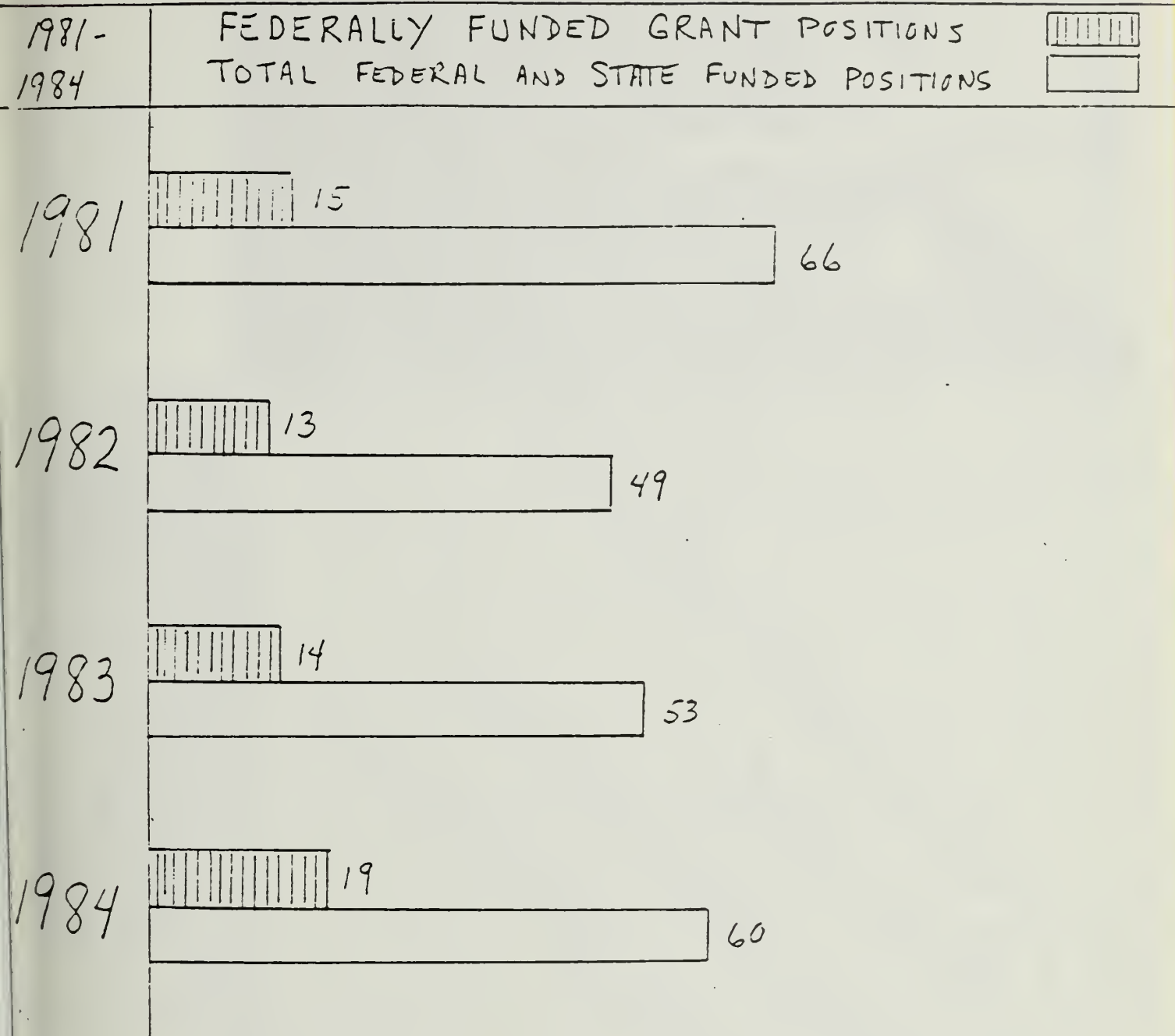


13



59

MCAD STAFFING LEVELS



MASSACHUSETTS

Disarmament
Commission
Massachusetts

State Library of Massachusetts
State House, Boston

Annual Report
Fiscal Years
1985 & 1986



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MICHAEL S. DUKAKIS
GOVERNOR

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

MESSAGE OF MICHAEL S. DUKAKIS
GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS

The Massachusetts Commission Against Discrimination carries the mandate of assuring that no one is denied a chance to share in the dream of opportunity in Massachusetts because of discrimination.

The Commonwealth of Massachusetts was one of the first states to have a commission devoted to protecting the human rights of its residents. Building on this proud history of supporting equal rights for all, the MCAD today is active, aggressive and effective. I am particularly pleased about its successful public outreach and education activities, the expansion of coverage to the handicapped, the development of a policy to protect AIDS patients, and the management improvements in case processing that have been accomplished during the last two years.

MCAD is visible evidence of government's commitment to include everyone in the benefits of our healthy economy. Prosperity for some must not be achieved at the expense of others. Therefore, my administration has worked to strengthen government's ability to overcome barriers to opportunity. For its successes in achieving this goal, I commend the MCAD and extend my continuing support.

Michael S. Dukakis
Governor



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MESSAGE OF ALEX RODRIGUEZ
CHAIRMAN, MCAD

MCAD is for everyone:

- . The mother denied housing because she has children.
- . The handicapped worker seeking work using his abilities, not his disabilities.
- . The multiracial audiences and participants in professional sports.
- . New immigrants to Massachusetts who face unthinking, illegal hostility.
- . The woman who wants to fulfill her lifetime ambition to become a police officer.
- . An AIDS patient wishing to continue his employment.

Discrimination against people because of immutable factors is illegal. It is also dysfunctional. A person discriminating against another because of race or creed or sex or handicap is not only acting illegally, but also irrationally. Racism and prejudice are mental illnesses, which cause people to be unable to make rational judgments. They are the mental illness of misattribution, the close cousin to their physical counterpart, color blindness. At MCAD, we may not be able to cure the illness, but we can prevent the people afflicted from interfering with the rights of others. And we can help educate people.



MCAD has set goals for itself and is reporting on its progress toward these goals in this report. The goals include:

- . Reaching as many people as possible to educate them on the rights we all share and hold sacred.
- . Processing cases rapidly and fairly.
- . Expanding the protection of the law to handicapped persons.
- . Using the Commonwealth's resources more efficiently and effectively.

At MCAD over the last two years, we have made progress on our agenda to increase the public's confidence in our capability. One measure of this success is the 50% increase in cases during the reporting period. We are proud of the diminution in the average days for case processing and especially proud of the increased efforts of our Public Sector Division which oversees affirmative action efforts in Massachusetts' municipalities.

This Annual Report is testimony to the fact that good management and hard work lead to the accomplishment of well-developed goals. In the final analysis, the staff of MCAD must be congratulated for making our success possible.

Alex Rodriguez
Chairman

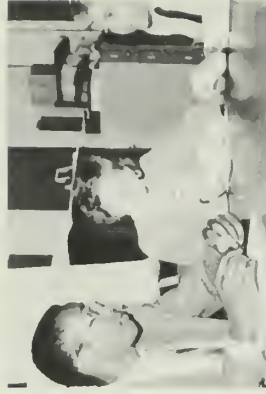
COMMISSIONERS OF MCAD

Commission Chairman **Alex Rodriguez**, a graduate of Goddard College and a former Loeb Fellow at Harvard University, served as a Member of the Commission from 1977 to 1981. He returned to the Commission in 1984 upon his appointment by Governor Michael S. Dukakis to a three-year term as Chairman and was subsequently reappointed for a second three-year term in 1987. He has previously been Monitor for Special Education in Boston for the Massachusetts Superior Court and Vice President of the United Community Planning Corporation.

Commissioner Rodriguez is President of the United Lower Roxbury-South End Community Development Corporation and has served for many years as Board Member of the Massachusetts and National Associations for Mental Health. He maintains active involvement in community issues in the areas of bilingual education, community development, and multicultural and multigroup citizen involvement on the local, state, and national levels.

As Chairman of the Commission, he is responsible for the overall management of the agency.

Commissioner **Frederick Hurst**, based in Springfield, was appointed by Governor Dukakis in 1985 and reappointed in 1987. Commissioner Hurst holds a Bachelor's Degree from Howard University, studied for a doctorate at the University of Massachusetts, and earned his law degree from De Paul University. Before his appointment, he was an attorney with the Massachusetts Defenders Committee in Springfield. He clerked in the Office of the Illinois Attorney General after law school.



He has been very involved in community activities in Western Massachusetts, serving on the Board of the Urban League and as an Incorporator of the Springfield Harambee Cultural Festival and publisher of a community newsletter.

As the Western Massachusetts appointee to the Commission, he manages the Springfield and Worcester offices and has special responsibility for the Western Massachusetts activities of the Commission.

Commissioner Kathleen Allen was appointed in 1986. She holds a law degree from Boston University Law School. Before her appointment to the Commission, she served as private counsel for an NAACP-sponsored suit on voting issues, was senior attorney with the Georgia Legal Services Program and has been clinical instructor of law and staff attorney with Greater Boston Legal Services and Harvard University Law School. She was a founder of the first women's law collective in the United States and, for five years, she practiced law with a general practice firm in Cambridge, Massachusetts.

She has broad background in teaching law: She was Joshua A. Guberman Fellow and Lecturer in Legal Studies at Brandeis University and has taught courses on Sex-Based Discrimination at Boston College Law School, Boston University Metropolitan College, and the University of Massachusetts.

At the Commission, she carries special responsibility for Southeastern Massachusetts.



WHAT IS MCAD?

The Massachusetts Commission Against Discrimination is the civil rights law enforcement agency for the Commonwealth of Massachusetts. Operating under a broad statutory mandate, the Commission is empowered to investigate and decide cases of discrimination in the areas of employment, housing, public accommodations, credit, services, and education. The Commission can receive and initiate complaints. It has strong investigatory powers and clear authority to require remedies where discrimination has been found to exist.

As a law enforcement agency, the MCAD's goal is full compliance with civil rights laws and regulations, and the Commission's efforts are designed to achieve that goal. In addition to handling complaints, the Commission promulgates rules and regulations, monitors and assists businesses and governments in their civil rights compliance efforts, provides educational programs for law enforcement officials who have civil rights enforcement responsibilities, and actively promotes broad public understanding of human rights.

MCAD is the Commonwealth's agency to protect your civil rights. It is charged with preventing discrimination based on

- . race
- . color
- . religion/creed
- . national origin
- . ancestry
- . sex
- . age
- . marital status
- . persons with children
- . handicap status
- . source of income (receipt of public assistance)
- . military status

Protected Classifications

MCAD has special responsibility for eliminating illegal discrimination in five major areas:

. Employment

The Fair Practices Law protects the rights of Massachusetts workers to obtain and maintain employment free of discrimination. It is illegal to discriminate in advertising, hiring, discharge, or in any terms or conditions of employment

. Public and Private Housing

It is illegal to discriminate in the sale, rental, or leasing of property, housing, or apartments or in related services such as advertising, showing of property, or obtaining a mortgage.

. Public Accommodation

No one may be denied services or access to any place, whether licensed or unlicensed, which solicits or accepts the patronage of the general public (hotels, restaurants, stores, transportation, hospitals, etc.).

	Public Multiple Dwelling	Other Covered Housing	Employment	Public Accommodations	Financial Credit	Post-Grad Vocational Ed	General Education
Members of Armed Services							
Veterans							
Persons with Children							
Deafness							
General Handicap							
Receipt of Public Assistance							
Marital Status							
Blindness							
Ancestry							
Age							
Sex							
National Origin							
Religion/Creed							
Color							
Race							

Note: Some categories are limited.
Call MCAD for information.

. Credit and Service

People may not be denied credit because of their race, religion, sex, marital status, national origin, age, or status as a recipient of public assistance. Discrimination is also prohibited in advertising, approving a loan, and extending credit.

. Educational Institutions

Massachusetts mandates equal educational opportunities in admission to any educational institution which accepts students or applications from the general public.

In addition to enforcing antidiscrimination law, the Governor's Executive Order 227 charges MCAD with additional responsibilities, including advising the Governor's Cabinet Officers on policy and practices relating to the Commonwealth's affirmative action mandates. Some of the immediate activities associated with this responsibility include reviewing applications for public funds to be sure that equality of opportunity is available for minorities, women, and disabled persons. The Commission is also responsible for monitoring the State's contract compliance program.

MCAD carries out its antidiscrimination and affirmative action mandates by:

- . Receiving and processing complaints of discrimination brought by individuals and organizations.
- . Educating the public through training programs, public speaking, media campaigns, and participation in groups supporting human rights.
- . Reviewing the activities of Massachusetts municipalities in order to assess and encourage compliance with fair practices and to assure that no public funds are spent to support discrimination or in a discriminatory manner.
- . Initiating research activities and legal suits that may advance the rights of Massachusetts citizens.

WHO IS MCAD?

The staff of the MCAD is led by a Chairman and two Commissioners appointed by the Governor for overlapping three year terms. One of the Commissioners, by statute, is appointed from the western part of the state. The Commissioners are responsible for setting policy and deciding those cases that cannot be settled administratively. The Chairman is also responsible for managing day-to-day operations of the Commission.

Staff of the MCAD is organized into four divisions: The Investigation Division, the Public Sector Division, the Control Unit (now including Finance and Administration), and the Legal Division. Department heads are located at the main offices in Boston. There are satellite offices in New Bedford, Springfield, and Worcester as well.

The Division of Investigation's primary function is to investigate complaints alleging unlawful discrimination in employment and educational practices. In the last three years, this division has had expanded responsibility for protecting the rights of the handicapped. Since December 1983, when Governor Michael S. Dukakis signed into law Chapter 553, a statute which prohibits discrimination against handicapped persons in employment, MCAD has been charged with enforcing this legislation. The number of cases brought to MCAD alleging discrimination based on handicap grew from 7 in fiscal year 1985 to 270 in fiscal year 1986 -- from less than 1% of the complaints to 10% of the complaints brought during the fiscal year.

This expanded responsibility and increased caseload has not been matched by commensurate staff expansion. The Division of Investigation has attacked this problem in part by developing an Intern Program, through which staff is expanded by approximately ten carefully selected students working through the summer term on investigations.



The Public Sector Division is composed of four units. One investigates all housing, credit, and public accommodation complaints. Another carries out a fair housing testing program. A third oversees the compliance of municipal governments and other arms of government with state affirmative action guidelines, and the fourth monitors compliance with the state's contract compliance program. By working with state, county, and local officials in cities and towns to meet equal opportunity requirements in housing, employment, and contract compliance, the division both prevents possible future discrimination complaints and supports the communities in their requests for federal and state funds.

The shortage of adequate housing in Massachusetts may in part explain the significant increase in the number of cases filed alleging housing discrimination. Between fiscal 1985 and fiscal 1986, the number of housing discrimination cases increased from 369 to 571 -- from 17% to 23% of all cases brought to MCAD.

The Civil Rights Review Unit tries to identify and resolve issues before they are litigated by working directly with cities and towns. The Review Unit helps municipalities develop and implement the fair housing, equal employment, and contract compliance plans required by the Governor's Executive Order 227 and the regulations promulgated thereunder. Compliance with these plans is required in order to qualify for federal and state grant money.



The Legal Division serves as in-house counsel to the Commission. The duties of the staff attorneys are varied and include advising investigators on complex investigations, reviewing investigative recommendations, attempting conciliation after a Probable Cause finding, and litigating where conciliation fails. Commission attorneys also represent the

Commission in all state and federal courts. Some important legal decisions during these two years are:

In *University Hospital v. MCAD*, the Supreme Judicial Court upheld the power of the Commission to issue investigative interrogatories and impose sanctions against respondents who do not respond to the interrogatories.

The Appeals Court, in *Buckley Nursing Home v. MCAD*, upheld the power of the Commission to award damages for emotional distress upon a finding of discrimination.

The Superior Court upheld a Commission award of \$17,000 for emotional distress damage in *Heath v. Town of Greenfield*; and in *College Town v. MCAD*, it upheld a Commission finding of sex discrimination where a supervisor had sexually harassed a female employee.

In *Silverstein v. Gnerre*, the Commission for the first time recognized the sexual harassment of a tenant by a landlord as sex discrimination.

Also, the Commission issued a policy decision on AIDS, declaring that it would consider AIDS a handicap within the meaning of the handicap discrimination law.

In March of 1986, the Commission began a policy of seeking temporary restraining orders in housing discrimination cases to prevent the loss of the housing unit at issue pending the Commission's holding of a public hearing.



The Commissioners' Office is operated as a distinct section of the Commission. The Executive Assistant to the Commissioners is responsible for developing the schedule of the Commissioners, assuring that the schedule is appropriately developed to facilitate the three Commissioners meeting their many different obligations. The Executive Assistant helps plan each Commissioner's schedule to include Full Hearings, Appeal Hearings, case management, Commission Meetings, managers' meetings, training activities, speaking engagements, and many other activities. The Commissioners' Executive Assistant also acts as press officer and affirmative action officer for the agency.

Established in 1977 and expanded in 1987, the Control Division now incorporates the financial-administrative function of MCAD. It is the planning and monitoring arm of the Commission and is responsible for providing monthly and weekly information and recommendations concerning management of the agency's caseload. The Control Division is responsible for a computerized management information system which allows regular tracking of individual cases and case flow. In addition, the division now oversees the administrative support function. The budget strongly affects the program, and so, developing it and managing it effectively is a major activity. In addition to state funding, MCAD receives three grants from its federal counterparts, the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD).



WHERE IS MCAD?

The main office of the Massachusetts Commission Against Discrimination is located in the McCormick State Office Building, One Ashburton Place, Boston. The Commissioners meet regularly in this office, and the staff of the Commission is managed from here. The Commission's staff is available to receive telephone inquiries or accept complaints on weekdays from 8:45 AM to 5 PM.

By legislation, one of the Commissioners comes from Western Massachusetts and is based there. Frederick Hurst is the Western Massachusetts Commissioner. In addition, one of the Commissioners is given primary responsibility for MCAD work in Southeastern Massachusetts. Kathleen Allen is given this responsibility.



MCAD maintains offices in Worcester, Springfield, and New Bedford. These offices are open to receive telephone inquiries and complaints on weekdays from 8:45 AM to 5 PM. Addresses and telephone numbers of these offices are:

Boston Office
617/727-3990
Sixth Floor, One Ashburton Place
(McCormick State Office Building)
Boston, MA 02108

Worcester Office
617/752-2272
75-A Grove Street
Worcester, MA 01605

Springfield Office
413/739-3330 or
413/739-2145
145 State Street
Springfield, MA 01103

New Bedford Office
617/997-3191
222 Union Street
New Bedford, MA 02740

MCAD also has a strong network of advisors in regional councils across the entire Commonwealth. There is a Statewide Advisory Board which coordinates the activities of the regional Advisory Councils, reviews the implementation of the Commission's programs and policies, and advises both the Commission and the Governor of the Commonwealth on matters of policy affecting the Commission. The Statewide Advisory Board is appointed by the Governor. Board and Council members serve without compensation.

The regional Advisory Councils are based in Boston, Cape Cod, Lawrence, New Bedford, Pittsfield, and Worcester. These Advisory Councils include representatives of major lending and credit institutions, major private employers, local post-secondary educational institutions, labor organizations; owners and brokers of residential property; local personnel or civil service administrators; women, minority, racial, ethnic, and linguistic groups; elderly and handicapped persons; and recipients of public assistance.



MCAD Staff

John Ahearn
Kathleen Allen
Luther Allen
Teresa Angers
Nancy Barnes
Loney Bond
Beth Cabral
Cynthia Cahill
Alan Cassella
Jeannette Christy
Sylvia Cohen
Cynthia Colt
Diane Cote
Julie Cotter
Judith Cummings
Barbara Dickey
Sharyn Dreyer
Miguel Fernandez
June Ferrell
Marlen Garcia
Stephanie Gibbs
Alfred Gray
Leslie Greer
Eugenia Guastaferrri
Edward Houchin
Edda Howard
Frederick Hurst
Leslie Hyde
Marlania Jones
Fakir Khalifa
Jerrold Levinsky
Edie Lockhart

Arthur Bright
Dr. Bradford R. Brown
Judith O. Brown
Dalia Calvo
Peter K. Chan
Francis Chang
Leonard P. Cooper
Joseph E. Corcoran
James R. Davis
Judith N. Dilday
Joseph Eid
Dr. Luis Fuentes
Betty A. Gittes
Dr. Phyllis S. Glick
Polly F. Jackson
William Krasnow
Marcella Lancome
Herbert Lemelman
Jorge Luna
Ronald McLean
Thomas A. Mela
Jimmie F. Mitchell
Hattie Moreland
Richard Mundo
John J. Nyhan
Thomas O'Brien
Mary O. Olivier
Randolph G. Peters
Carolyn A. Reed
William C. Ross
Phyllis N. Segal
Horace Seldon
John A. Senna
James A. Sullivan
Francis A. Taggart
May Ling Tong
Delda White
Bruce A. Young

Denise Lussier
Robert Mahoney
Katherine Martin
Paul Minor
Terrence Morris
Jean Musiker
Rosemary Nevins
Wah Don Ng
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Susan Ponte
Charles Porter
Victor Posada
John Ramos
Migdalia Rivera
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Laurie Rubin
Michael Rubin
Elaine Rucks
Abigail Soto Colon
James Sutton
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Francisco Villalobos
Barbara Walsh
Lois Wilcox
Judith Wright
Franklin Young

State Advisory Board

Myron Alexander
John Blount
Janet Boyle

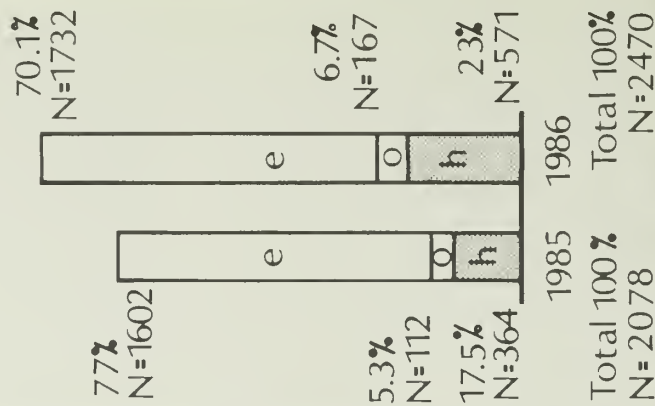
HOW CAN MCAD HELP ME?

If you think you have been discriminated against, you can bring a complaint to MCAD. Your complaint will be investigated, and MCAD will seek to resolve it.

Here are four things you should know about the MCAD Complaint Process:

1. The MCAD is an *impartial*, objective investigating agency. We are not "for" or "against" anyone or any side. Our investigators are neutral and professional, and their decisions are based on facts and evidence. If and when a determination of Probable Cause is made, the Commission may provide, through the General Counsel, an attorney to conciliate and to present the case at a public hearing. The complainant may be represented by an attorney of his or her own choosing or by a Commission attorney after Probable Cause is found.
2. Complaints must be *timely*. Massachusetts law requires that all investigations proceed promptly. Everyone benefits from a prompt decision; everyone loses by delay. To keep cases moving, the law imposes certain deadlines which must be observed.
3. We encourage and actively work to achieve *settlements*. We want to help both parties achieve a voluntary resolution to the complaint whenever possible.
4. Massachusetts Law, MGL Chapter 151B, Section 4(4), specifically prohibits any *retaliation* against any person who has filed a complaint, participated in any investigation, or otherwise opposed allegedly discriminatory practices, and the MCAD strongly enforces this law. Any harassment or action adverse to the complainant or witnesses will be investigated and aggressively prosecuted.

Discrimination Cases Brought to MCAD By Type of Complaint



N = Number
e = employment
o = other: Public Accommodations,
Credit, Education
h = housing

How the Complaint Process Works

When a person calls the MCAD with a complaint, a series of steps are initiated. Most complaints are resolved at some point along the way and do not proceed through all steps, but a description of a complete case process follows.

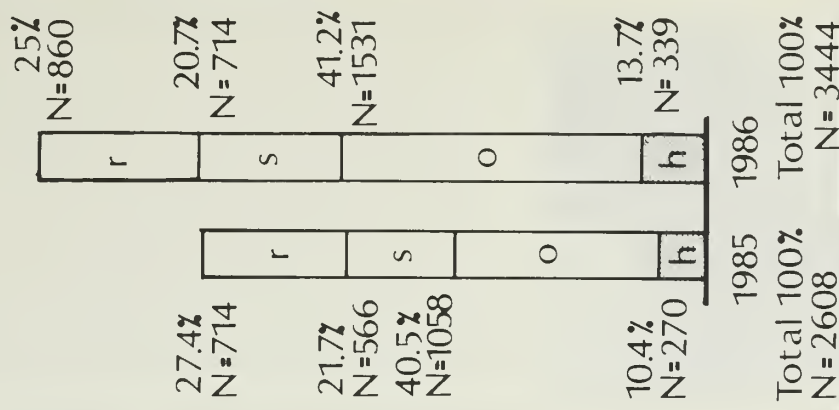
A complainant who calls is asked to come into a Commission office to file a complaint. A *complaint* must include a list of the names, titles, business addresses, and telephone numbers of persons charged with having committed alleged unlawful discriminatory acts; names of witnesses if any; and any supportive documentation (notices, leases, comparative data, etc.). The complainant should be prepared to give a summary of the specific acts of alleged unlawful discrimination, including dates. In addition, any financial losses suffered as a result of the alleged discriminatory act should be listed.

Upon filing, the complainant meets with an *intake* worker. The intake worker discusses the complaint to clarify the information given, assuring that it is as complete and correct as possible. The complaint is then docketed.

Once MCAD determines that the complaint falls within its jurisdiction, the process of *investigation* begins. The respondent (the person or institution charged with unlawful discrimination) is notified about the complaint and is asked to respond to the allegations by submitting a position statement or by responding to questions pertinent to his practices in the area in which discrimination is alleged.

Once responses are analyzed and discussed with the complainant, the investigator judges whether there is a reasonable basis for settlement. A *Settlement Conference* may be convened. Many cases are closed in this manner.

Discrimination Complaints Brought to MCAD By Basis of Complaint



N = Number

r = race

s = sex

o = other: Age, Origin, Marital Status,
Children, Mental Illness,
Welfare, Retardation

h = handicap

If settlement does not seem possible, the investigator prepares an investigative plan. This includes areas for further investigation, such as witnesses and documents. If necessary, the results of the investigative plan may lead to a *Fact Finding Conference* attended by the complainant and respondent and appropriate witnesses. The outcome of the Fact Finding Conference, which is held after more investigation is a finding of Probable Cause or Lack of Probable Cause. Probable Cause is defined as sufficient evidence to convince the reasonable person that the discriminatory act did occur and/or there are factual issues in dispute which are best left to hearing.

A Probable Cause finding leads to another attempt to conciliate. A Lack of Probable Cause Finding may be appealed by the complainant.

Should the attempt to conciliate fail, the Commission will convene a *Public Hearing*. The Commission is empowered to make a judgment as a result of Public Hearing. Both the complainant and the respondent have the right to appeal the decision to the full Commission and to the Superior Court on the basis of the record established at the Commission proceedings.

Settling a Case

The MCAD emphasizes the importance of settlement at every stage of the complaint process. The Commission is ready and willing to work with both parties to reach a mutually acceptable resolution and will bring people together as soon as possible to discuss settlement terms. A settlement made prior to a Commission determination is not an admission of guilt or liability and results in a formal closing of the case.

A case can be settled if or when both the respondent and the complainant make an agreement that the Commission approves. A settlement may occur at any point in the case process and can be suggested to both parties by a representative of the MCAD or by one party to the other. A representative of the MCAD reviews settlements for fairness.



WHAT'S NEW AT MCAD?

This segment highlights some new activities at MCAD over the last few years. One activity of each division is highlighted. In the last few years, each division of MCAD has made an improvement that will help the state's antidiscrimination efforts.

Legal

MCAD has developed and promulgated a new Probable Cause Standard. This is relatively unusual in that not many states have a Probable Cause Standard in writing. Massachusetts, though, went through a complete and thorough process to develop a standard that had received full discussion by representatives of all affected parties.

The process involved the following steps:

- . An ad hoc committee of representatives of the plaintiffs bar and the defendants bar was convened.
- . Following their discussions, MCAD proposed the standard and followed the Commonwealth's procedures for promulgating regulations.
- . MCAD notified interested parties.
- . There was a comment period and a hearing. Written and verbal comments were taken.
- . Following the comment period, the probable cause standard was promulgated.

The new Probable Cause Standard is:

"A finding of Probable Cause shall be made when, after appropriate investigation, the Investigating Commissioner concludes that there is sufficient evidence upon which a finder could form a reasonable belief that the respondent committed an unlawful practice. In making determination, disputes involving genuine issues of material fact are to be reserved for determination at hearing."

Control Unit

The Control Unit has led the agency in a successful effort to decrease the time it takes to process a case.

One of the most nagging problems at MCAD has been the length of time it can take to process a case. In 1983, the average length of time to process a case was 309 days. Using the state's personnel management system, the agency set the goal of reducing this time.

The Control Unit set up systems to monitor case-processing time, including regular reporting of progress. Significant accomplishments can be reported. Case-processing time was reduced from 270 days in 1985 to 242 days in 1986. It had been more than 300 days in previous years.

Public Sector

In 1984, Massachusetts passed legislation setting criminal penalties for persons convicted of violating the civil rights of individuals. This legislation was passed because of the violent incidents which occurred against people exercising their civil rights in the area of fair housing. How law enforcement officials and others could be ready to prevent or stop incidents when people move into segregated neighborhoods became a work activity of the division.

In order to provide District Attorneys and law enforcement personnel with support and training to enforce the new law, MCAD developed a special project in coordination with the Community Relations Service of the U.S. Justice Department and the State's District Attorneys. Workshops for law enforcement personnel and civil rights activists were planned for each District Attorney's jurisdiction in the Commonwealth.

The first of these workshops was held in Norfolk County. It was designed to bring together MCAD's network of fair housing supporters and law enforcement personnel for a day of discussion and training. The District Attorney was present, as were law enforcement personnel from each municipality.

Subsequent workshops have been held in Essex, Middlesex, Suffolk, Franklin-Hampshire, and Bristol Counties. Some have included other special concerns, such as immigration. Plans are underway for additional workshops in Hamden, Plymouth, Berkshire, and Dukes-Nantucket.

The workshops have been well attended and well received. As a result of the workshops, agreements have been made between MCAD and the District Attorneys to work together in support of civil rights.

Investigations

The addition of handicapped persons to the groups protected by Massachusetts law is one reason among many that the caseload of MCAD has grown significantly in the last few years. But the increased caseload has not been accompanied by a commensurate increase in staff to process these cases.

One partial solution to this problem has been found in the development of an intern program in the Investigations Department. The student summer intern program has additional benefits as well: It helps develop a pool of people knowledgeable about civil rights who may work in the area in the future, and it supports the idealism of young people concerned about human rights.

Applications to be student interns are received from colleges around the country. There were 8 interns in 1985 and 11 in 1986. The interns are given a week long training at MCAD and are then assigned cases which they process under close staff supervision. Interns present their work in weekly review sessions and are responsible for writing up cases. The program has received warm response from participants and has helped with the caseload.

Writing and Production: McCormick Bowers Associates
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MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

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MESSAGE FROM THE CHAIRMAN	1
WHAT IS MCAD?	2
ORGANIZATION OF MCAD	4
Commissioners' Office.....	4
Division of Investigations.....	4
Public Sector Division.....	6
Control Division	8
Legal Division.....	9
COMMISSIONERS OF MCAD ,.....	10
MCAD OFFICES	12
MCAD Staff	13
State Advisory Board.....	13
THE COMPLAINT PROCESS	14

Page
967
22

MESSAGE FROM THE CHAIRMAN

MCAD is for everyone:

- The mother denied housing because she has children.
- The disabled worker seeking work using his abilities, not his disabilities.
- The multiracial audiences and participants in professional sports.
- New immigrants to Massachusetts who face unthinking, illegal hostility.
- The woman who wants to fulfill her lifetime ambition to become a police officer.
- A person with AIDS wishing to continue his employment.

Discrimination against people because of immutable factors is illegal. It is also dysfunctional. A person discriminating against another because of race or creed or sex or disability is not only acting illegally, but also irrationally. Racism and other forms of prejudice are mental illnesses, which cause people to be unable to make rational judgments. They are the mental illness of misattribution, the close cousin to their physical counterpart, color blindness. At MCAD, we may not be able to cure the illness, but we can prevent the people afflicted from interfering with the rights of others. And we can help educate people.

MCAD has set goals for itself and is reporting on its progress toward these goals in this report. The goals include:

- Reaching as many people as possible to educate them on the rights we all share and hold sacred.
- Processing cases rapidly and fairly.
- Expanding the protection of the law to people with disabilities.
- Using the Commonwealth's resources more efficiently and effectively.

At MCAD over the last three years, we have made progress on our agenda to increase the public's confidence in our capability. One measure of this success is the 29% increase in cases during the reporting period. We are proud of the fact that with a decrease in state funding and a diminution in staff we were able to increase the number of case closings from 1,955 in FY'87 to 2,731 in FY'89, a Commission all-time high. In addition, we are especially proud of the increased efforts of our Public Sector Division, which oversees affirmative action efforts in Massachusetts municipalities.

This Annual Report is testimony to the fact that good management and hard work lead to the accomplishment of well-developed goals. In the final analysis, the staff of MCAD must be congratulated for making our success possible.

Alex Rodriguez
Chairman

WHAT IS MCAD?

The Massachusetts Commission Against Discrimination was established in 1946 as the civil rights law enforcement agency for the Commonwealth of Massachusetts. Operating under a broad statutory mandate, the Commission is empowered to investigate and decide cases of discrimination in the areas of employment, housing, public accommodations, credit, services, and education. The Commission can receive complaints brought by individuals and organizations, and can initiate its own complaints. It has strong investigatory powers and clear authority to require remedies where discrimination has been found to exist.

As a law enforcement agency, the MCAD's goal is full compliance with civil rights laws and regulations. In addition to handling complaints, the Commission promulgates rules and regulations, monitors and assists businesses and governments in their civil rights compliance efforts, provides educational programs for law enforcement officials who have civil rights enforcement responsibilities, and actively promotes broad public understanding of human rights issues.

MCAD addresses discrimination on the basis of

- race
- color
- religious creed
- national origin
- ancestry
- sex
- age
- marital status
- persons with children
- handicap status
- source of income (receipt of public assistance)
- military/veteran status

MCAD has special responsibility for eliminating illegal discrimination in five major areas:

Employment

The Fair Practices Law protects the rights of Massachusetts workers to obtain and maintain employment free of discrimination. It is illegal for an employer to discriminate in advertising, hiring, discharge, or in any terms or conditions of employment.

Public and Private Housing

The Fair Housing Law prohibits discrimination in the sale, rental, or leasing of property, housing, or apartments, or in related services such as advertising, showing of property, or obtaining a mortgage.

Public Accommodations

It is illegal to deny services or access to any place, whether licensed or unlicensed, which solicits or accepts the patronage of the general public (such as hotels, restaurants, stores, transportation, hospitals, etc.).

Credit and Service

Denial of credit based on race, color, religious creed, sex, marital status, children, national origin, ancestry, age, handicap, or status as a recipient of public assistance is illegal. Discrimination is also prohibited in advertising, loan approvals, and extending credit.

Educational Institutions

Massachusetts mandates equal educational opportunities in admission to any educational institution which accepts students or applications from the general public.

In addition to enforcing anti-discrimination law, the Governor's Executive Order 227 charges MCAD with additional responsibilities, including advising the Governor's Cabinet Officers on policy and practices relating to the Commonwealth's affirmative action mandates. This includes reviewing applications for public funds to ensure equality of opportunity for racial and ethnic minorities, women, and people with disabilities. The Commission is also responsible for monitoring the State's contract compliance program, which requires recipients of discretionary state funding to implement and enforce programs that guarantee equality of opportunity for minorities and women.

MCAD carries out its anti-discrimination and affirmative action mandates by:

- receiving and processing complaints of discrimination brought by individuals and organizations;
- educating the public through training programs, public speaking engagements, media campaigns, and participation in groups supporting human rights;
- reviewing the activities of Massachusetts municipalities in order to assess and encourage compliance with fair practices, and to ensure that no public funds are spent in a discriminatory manner or in support of discriminatory practices;
- initiating research activities and legal suits that may advance the rights of Massachusetts citizens.

ORGANIZATION OF MCAD

The Massachusetts Commission Against Discrimination is organized into five sections: the Commissioners' Office, the Division of Investigations, the Public Sector Division, the Control Division, and the Legal Division. Department heads are located at the main offices in Boston. Satellite offices are located in New Bedford, Springfield, and Worcester.

Commissioners' Office

The Commissioners' Office is operated as a distinct section of the Commission. Commissioners are responsible for setting policy and deciding those cases that are not settled administratively. There are three Commissioners, one of whom chairs the Commission. The three Commissioners, sitting as a Commission, oversee the general operations of the entire Commission. Each of the commissioners is given primary responsibility for a particular region of the state. One is appointed from the western part of the state and serves in the MCAD's Springfield office; another carries special responsibility for Southeastern Massachusetts and assists the third Commissioner in overseeing the rest of the state.

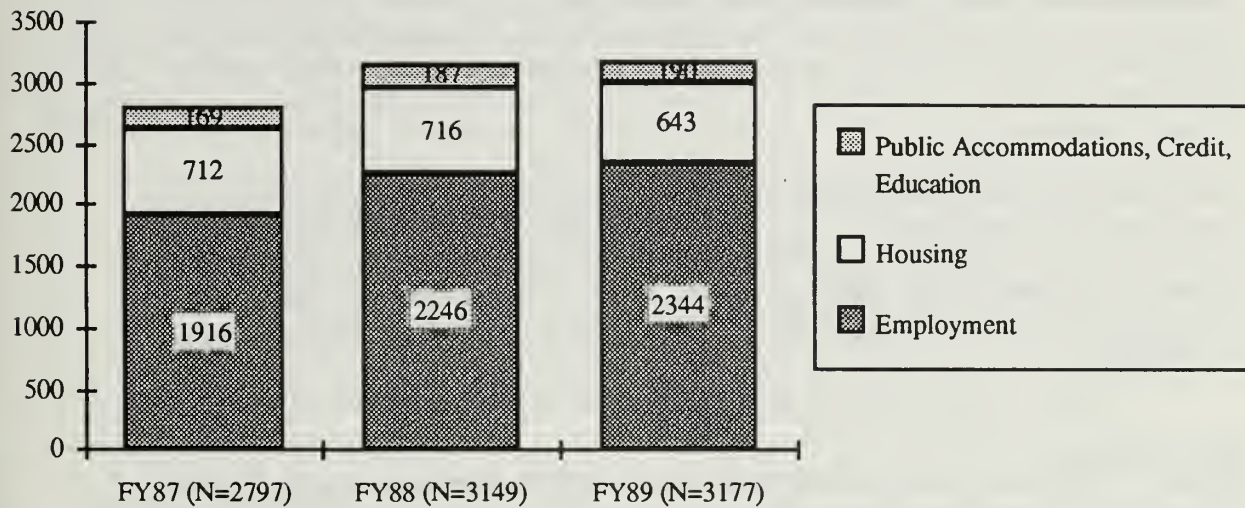
The Executive Assistant to the Commissioners develops the Commissioners' schedules to ensure that they meet their many obligations, which include Full Hearings, Appeal Hearings, case management, Commission Meetings, managers' meetings, training activities, speaking engagements, and other civic activities. The Executive Assistant to the Commissioners also acts as the press officer and the affirmative action officer for the agency.

Division of Investigations

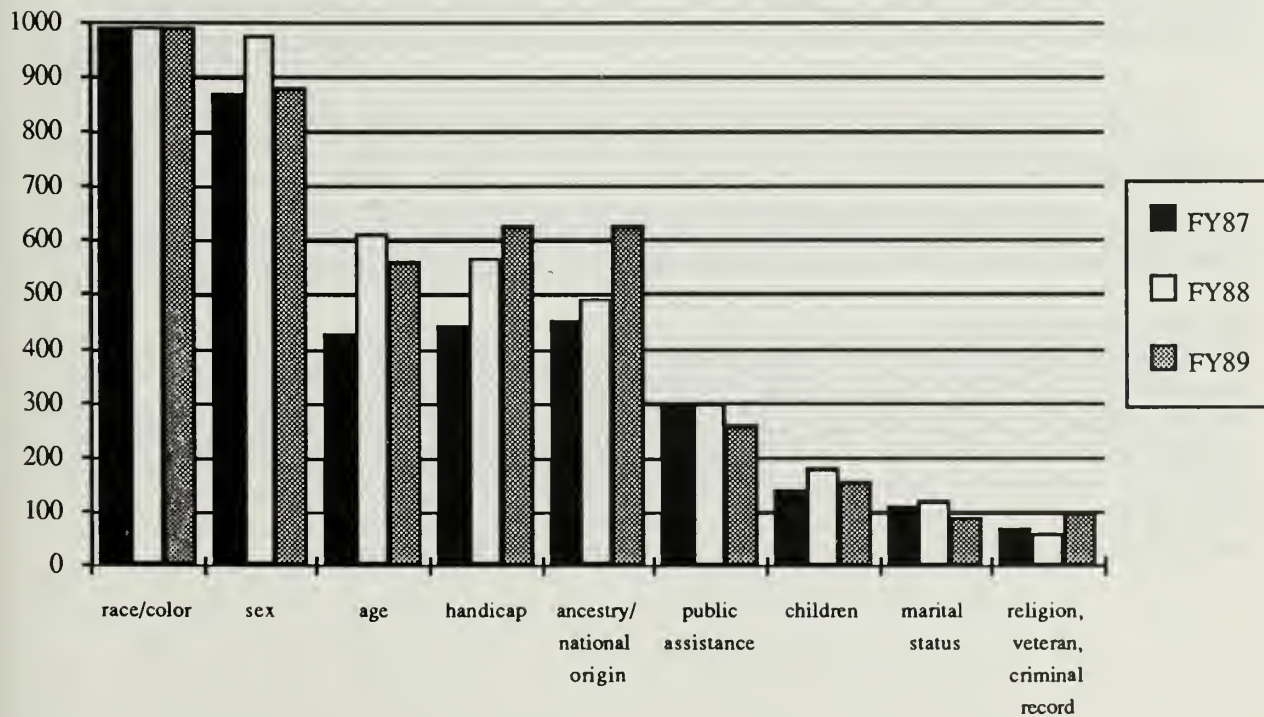
The Division of Investigations receives and investigates all complaints concerning discrimination in education and private and public employment. In its investigations, the Division utilizes Fact-Finding Conferences, interrogatories, personal interviews, and on-site visits to search out information concerning allegations of discrimination. During the investigation stage, the Division may provide an invaluable service to both the complainant and the respondent by airing their concerns and helping to defuse the matter. Investigators strive to both improve conditions and practices in the work place and to assist parties in arriving at a mutually satisfactory resolution.

Despite budgetary constraints, MCAD boasts a high rate of success in favorably resolving its complaints. At 25 percent, MCAD's rate of Probable Cause findings is approximately ten percent higher than national rates of Probable Cause findings. When viewed in tandem with settlements, MCAD's rate of case closure in favor of the complainant is between 40 and 50 percent. This ratio is significantly higher than the national averages on case closures of this kind.

**Number of Complaints Filed with MCAD
for FY 1987, 1988 & 1989
by Type of Complaint**



**Number of Complaints Filed with MCAD
for FY 1987, 1988 & 1989
by Basis of Complaint**



AIDS Task Force

In 1986, the Commission created the AIDS Task Force to address increasing discrimination against people with AIDS and people perceived to be at risk for having AIDS. The Task Force set out to handle and expedite all HIV and AIDS-related discrimination complaints and to implement policy relative to the AIDS epidemic and civil rights. One of the Task Force's first accomplishments was a comprehensive policy statement classifying AIDS and perception of risk for AIDS as disabilities under the Commonwealth's Handicap Law. The policy was one of the first of its kind in the nation, and has been subsequently implemented in many other localities.

The AIDS Task Force was awarded one of the Commonwealth's Pride in Performance Awards in 1988. In addition, the Task Force was selected as one of ten Manuel Carballo Award recipients in the state. The Carballo Award, which is given annually, is one of the highest honors conferred by the Commonwealth of Massachusetts. The Task Force donated its \$1,000 award to AIDS Action Committee, a non-profit AIDS service organization.

Intern Program

Between Fiscal Years 1987 and 1989, the Division of Investigation's case load grew by 22%. Since MCAD's state funding has not increased to match these added demands on the agency, the Division of Investigations has developed a volunteer intern program to help meet its staffing needs.

Applications to become student interns are received from colleges around the country. Interns are given a week-long training session at MCAD and are then assigned cases which they process and write up under close staff supervision. The program not only helps MCAD manage its case load, it also develops a pool of people knowledgeable about civil rights issues. The intern program has received warm responses from its many participants.

Public Sector Division

The Public Sector Division of MCAD is comprised of three units: *Housing Investigations*, *Systemic Fair Housing Testing and Enforcement*, and *Civil Rights Review*.

Housing Investigations

The Housing Investigations staff investigates all housing, credit, and public accommodations complaints using many of the same techniques as the Division of Investigations. In the past several years, MCAD has processed an increasing number of housing cases contracted with the U.S. Department of Housing and Urban Development (HUD). In 1989, MCAD's investigative staff closed 10% of all HUD cases nationally. This percentage, which is remarkably high given the comparatively small size of MCAD, is due to the dedication and hard work of MCAD's investigative and legal staff.

Systemic Fair Housing Testing and Enforcement Program

Over the past several years, MCAD significantly expanded the operations of its Systemic Fair Housing Testing and Enforcement Program. The Systemic Program aims to combat large-scale, institutionalized housing discrimination in Massachusetts. The Program accomplishes this objective through two major program initiatives: 1) a Testing Program, in which housing providers in particular geographic areas are investigated for compliance with the fair housing laws by the use of matched sets of individuals who pose as homeseekers; and 2) an Enforcement Program, in which housing discrimination complaints are brought against those agencies found to discriminate.

Major accomplishments of the past several years include:

- Testing Program conducted in Framingham that investigated discrimination against blacks, Hispanics, and rental subsidy recipients.
- Complaints initiated against six real estate agencies and one property management company in Framingham on the basis of the Testing Program's results.
- Framingham complaints investigated, resulting in Probable Cause findings and the issuance of a formal report entitled *Housing Discrimination in the Rental Market: A Report on the Barriers Faced by Women with Rental Subsidies, Blacks, and Hispanics*.
- Testing Program conducted in Waltham and Medford that investigated discrimination against blacks, rental subsidy recipients, and families with children.
- Complaints initiated against seven Waltham real estate agencies and four Medford agencies.

MCAD's program has been primarily funded through competitive grants received from the U.S. Department of Housing and Urban Development.

Civil Rights Review Unit

The Civil Rights Review Unit is the conduit through which grant recipients achieve compliance with prevailing requirements. The Unit has two primary functions: the first is monitoring the state's contract compliance program; the second is overseeing the compliance of municipalities and other units of government with the requirements of the state's Executive Order #227 and state affirmative action regulations, which require recipients of discretionary state funding to implement and enforce programs that guarantee equality of opportunity for minorities and women.

The Unit attempts to assist grant applicants in resolving affirmative action issues before they are litigated by working directly with municipalities in developing and implementing fair housing, equal employment, contract compliance, and minority/women business enterprise programs. An affirmative effort to develop and implement these programs is necessary in order to qualify for federal and state grants.

The Civil Rights Review Unit's municipal employment and contract compliance efforts have shown excellent results. A Public Sector Division report submitted in 1988 revealed that between 1984 and 1988 the number of women employed by municipalities in the Commonwealth increased by 9.1 percent; the number of minorities employed increased by 7.8 percent. In addition, the number of communities reporting contract compliance data increased from 41 in 1984 to 110 in 1988. During this period, there was a 65 percent increase in the number of hours worked by women, and a 72 percent increase in the number of hours worked by minorities, on municipal contract projects.

Roger C. MacLeod, Director of MCAD's Public Sector Division for 11 years, left the Commission in 1986. During his tenure, Mr. MacLeod developed a systemic approach to fair housing testing and was instrumental in implementing many of the state's affirmative action programs. His legacy was commemorated in 1985, when he was awarded the Robert K. Byron Award for his outstanding contributions to public service.

Control Division

Established in 1977 and expanded in 1987, the Control Division incorporates the financial and administrative functions of MCAD. As the planning and monitoring arm of the Commission, the Control Division provides information and recommendations on management of the agency's case load using a computerized management information system which allows tracking of individual cases and case flow. The Control Division develops and manages the Commission's budget, which includes three yearly contracts from MCAD's federal counterparts, the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD). In addition, the Division oversees the administrative support functions of the Commission.

The Control Division docketed 9,123 complaints during the reporting period. In addition, the Division was responsible for monitoring over 3,300 Title VII complaints contracted through the U.S. Equal Employment Opportunity Commission (EEOC).

During the reporting period, the Control Division developed an intake system that allows complaints to be input directly on computers as they are received. The new system, developed under the direction of Terrence P. Morris, Deputy Director of Administration for MCAD, and Patricia McLaughlin of the Office of Management Information Systems, uses a program specifically designed for MCAD that automatically forwards complaints and other correspondence to parties. Word processing equipment has also been introduced throughout the agency for investigators and attorneys to use in their daily work. The Commission's transition to computerized systems was made in record time thanks to the cooperation and commitment of MCAD staff.

In 1987, Fakir Khalifa, MCAD's Fiscal Officer, was awarded one of the Commonwealth's Pride in Performance awards for his accomplishments in the Control Division.

Legal Division

The Legal Division serves as in-house counsel to the Commission. Duties of the legal staff are varied, and include advising investigators on complex investigations, reviewing investigative recommendations, attempting conciliation following a Probable Cause finding, and prosecuting cases in public hearing when conciliation fails. Commission attorneys also represent the Commission in court.

Some important legal decisions during Fiscal Years 1987, 1988, and 1989 include:

- The Supreme Judicial Court, in *Gnerre v. MCAD*, upheld the prior determination of the MCAD that recognized sexual harassment of a tenant by a landlord as sex discrimination.
- In *New York Motor Service, Inc. v. MCAD*, the Supreme Judicial Court affirmed the Commission's finding that the employer had failed to make reasonable accommodation to an employee's religion by refusing his request for time off to observe holy days.
- The Appeals Court, in *Franklin Publishing Co. v. MCAD*, upheld a Commission award of emotional distress, back pay and interest in a pregnancy-related sex discrimination case.
- In *College Town, Inc. v. MCAD*, the Supreme Judicial Court upheld the Commission's decision that an employer is strictly liable for sexual harassment by a supervisor.
- The Supreme Judicial Court upheld the Commission's definition of a place of public accommodation in *Concord Rod and Gun Club v. MCAD*, and required it to admit females into membership.
- In *Hillary's v. MCAD*, the Appeals Court overturned a Superior Court decision and affirmed a Commission determination that an employer had failed to meet its burden of showing mitigation of damages.

COMMISSIONERS OF MCAD

The MCAD is led by three commissioners who are appointed by the Governor for overlapping three-year terms. Each Commissioner is responsible for a particular geographic portion of the state.

Commissioner Alex Rodriguez, Chairman

Alex Rodriguez, a graduate of Goddard College and a former Loeb Fellow at Harvard University, served as a member of the Commission from 1977 to 1981. In 1984, he was appointed to a three-year term as Chairman of the Commission by Governor Michael S. Dukakis, and was subsequently reappointed to a second three-year term in 1987. He was previously Monitor for Special Education in Boston for the Massachusetts Superior Court, and Vice President of the United Community Planning Corporation.

Commissioner Rodriguez is President of the United Lower Roxbury/South End Community Development Corporation, and has served for many years as Board Member of the Massachusetts and National Associations for Mental Health. He is active in community issues in the areas of bilingual education, community development, and multi-cultural and multi-group citizen involvement on the local, state, and national levels.

As Chairman of the Commission, Commissioner Rodriguez is responsible for the overall management of the agency.

Commissioner Frederick Hurst

Frederick Hurst, the Western Massachusetts appointee to the Commission, was first appointed by Governor Dukakis in 1984, and was reappointed in 1986 and 1989. Commissioner Hurst holds a Bachelor's degree from Howard University, studied for a doctorate at the University of Massachusetts, and received his law degree from De Paul University. He has clerked in the Office of the Illinois Attorney General and, prior to his appointment to MCAD, he was an attorney with the Massachusetts Defenders Committee in Springfield.

Commissioner Hurst is involved extensively in community activities in Western Massachusetts, and has served on the Board of the Urban League, as an Incorporator of the Springfield Harambee Cultural Festival, and as publisher of a community newsletter.

Commissioner Hurst manages the MCAD's Springfield and Worcester offices, and has special responsibility for the Western Massachusetts activities of the Commission.

Commissioner Kathleen Allen

Kathleen Allen was appointed to the Commission by Governor Dukakis in 1985, and was reappointed in 1988. She is a graduate of Lake Erie College, and holds a master's degree and a law degree from Boston University. Prior to her appointment to the Commission, she served as private counsel for an NAACP-sponsored lawsuit on voting issues, was senior attorney with the Georgia Legal Services Program, and was a staff attorney with Greater Boston Legal Services. In addition, she was one of the founders of the first women's law collective in the United States, and she practiced law for five years with a general practice firm in Cambridge, Massachusetts.

Commissioner Allen has a broad background in teaching law. She was Joshua A. Guberman Fellow and Lecturer in Legal Studies at Brandeis University, and she has taught courses on sex-based discrimination at Boston College Law School, Boston University Metropolitan College, and the University of Massachusetts. In addition, she has been a clinical instructor of law at Harvard University Law School.

Commissioner Allen is based in the Boston office, and carries special responsibility for Southeastern Massachusetts.

MCAD OFFICES

The main office of the Massachusetts Commission Against Discrimination is located in Boston. The Commissioners meet regularly in this office, and the staff of the Commission is managed from this location. MCAD also maintains offices in Worcester, Springfield, and New Bedford. All of the Commission's offices are open to receive telephone inquiries and accept complaints on weekdays from 8:45 AM to 5:00 PM. Addresses and telephone numbers of MCAD offices are as follows:

Boston Office 617/727-3990	Sixth Floor, One Ashburton Place (McCormick State Office Building) Boston, MA 02108
Worcester Office 508/752-2272	129 Lincoln Street Worcester, MA 01605
Springfield Office 413/739-3330 or 413/739-2145	145 State Street Springfield, MA 01103
New Bedford Office 508/997-3191	53 North 6th Street, Room 203 New Bedford, MA 02740

MCAD has a strong network of advisors in regional councils across the state. The Statewide Advisory Board, appointed by the Governor, coordinates the activities of the regional Advisory Councils, reviews the implementation of the Commission's programs and policies, and advises both the Commission and the Governor on matters of policy affecting the Commission. Board and Council members serve without compensation.

The regional Advisory Councils are based in Boston, Cape Cod, Lawrence, New Bedford, Pittsfield, and Worcester. These Councils include representatives of major lending and credit institutions; major private employers; local post-secondary educational institutions; labor organizations; owners and brokers of residential property; local personnel or civil service administrators; women; racial, ethnic, and linguistic groups; elderly persons; persons with disabilities; and recipients of public assistance.

MCAD Staff FY'87, '88, '89

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John Ahearn
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Teresa Angers
Nancy Barnes
Nathaniel Berman
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Jeannette Christy
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Sylvia Cohen
Cynthia Colt
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Judith Cummings
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Sharyn Dreyer
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Stephanie Gibbs
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Vivian Lindo
Edie Lockhart

Denise Lussier
Roger MacLeod
Robert Mahoney
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Paul Minor
Melvina Monteiro
Terrence Morris
Maureen Mulderry
Jean Musiker
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Ilene Titus
Ronald Traylor
Evelyn Tyler
James Vance
Francisco Villalobos
Barbara Walsh
Lois Wilcox
Sharyn Wong
Celia Worrell
Judith Wright
Franklin Young

State Advisory Board

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Dr. Phyllis S. Glick
Polly F. Jackson
William Krasnow
Marcella Lancome
Herbert Lemelman
Jorge Luna
Ronald McLean
Thomas A. Mela
Jimmie F. Mitchell
Hattie Moreland
Richard Mundo
John J. Nyhan
Thomas O'Brien
Mary O. Oliver
Randolph G. Peters
Carolyn A. Reed
William C. Ross
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THE COMPLAINT PROCESS

The complaint process is the primary method by which MCAD fulfills its anti-discrimination mandate. An individual who feels she or he has been discriminated against may bring a complaint to MCAD. MCAD will investigate the complaint and seek to resolve it.

Four principles are integral to the MCAD complaint process:

1. The MCAD is an impartial, objective investigating agency. MCAD is not “for” or “against” anyone or any side. Investigators are neutral and professional, and their actions are based on facts and evidence.
2. Complaints must be timely, and must generally be filed within six months of the alleged discriminatory act. Massachusetts law requires that all investigations proceed promptly. To keep cases moving, the law imposes certain deadlines that must be observed.
3. The Commission encourages and actively works to achieve settlements. It is in the interest of both parties to achieve a voluntary resolution to the complaint whenever possible.
4. Massachusetts Law (MGL Chapter 151B, Section 4(4)), specifically prohibits retaliation against any person who has filed a complaint, participated in an investigation, or otherwise opposed allegedly discriminatory practices. The MCAD strongly enforces this law. Any harassment or action adverse to the complainant or witnesses is investigated and aggressively prosecuted.

How the Complaint Process Works

1) Filing the complaint. An individual wishing to file a complaint contacts the nearest MCAD office. The complainant meets with an investigator and gives a summary of the specific acts of alleged unlawful discrimination, including:

- the dates on which the alleged discriminatory acts occurred;
- a list of the names, titles, business addresses, and telephone numbers of persons charged with committing unlawful discrimination;
- names of witnesses, if any;
- any supporting documentation, such as notices, leases, and comparative data;
- details of any financial losses suffered as a result of the alleged discrimination.

If the complaint falls within the Commission’s jurisdiction, the investigator drafts a formal complaint based on the information provided by the complainant. The complaint is mailed to the individual or organization charged with committing unlawful discrimination, who is asked to respond to the allegations.

2) The investigation process. Based on the respondent’s answers to the complaint, the investigator advises whether there is reasonable basis for settlement. A Settlement Conference may be convened with both the complainant and the respondent. Many cases are closed in this manner.

If the case is not settled at this stage, the investigator commences further investigation through various means, including interrogatories and document requests. The investigator may convene a Fact-Finding Conference at which the complainant and respondent, as well as appropriate witnesses, are present.

3) Causal determination. Based on the information obtained during the investigation process, the Investigating Commissioner makes a finding of either *Probable Cause* or *Lack of Probable Cause*. A finding of Probable Cause is made when the Investigating Commissioner concludes that there is sufficient evidence upon which a fact-finder could form a reasonable belief that the respondent committed unlawful discrimination. Such a finding reserves disputes involving genuine issues of material fact for determination at a public hearing. The complainant has the right to appeal a determination of Lack of Probable Cause by filing a request within ten (10) days of the initial determination.

A finding of Probable Cause in housing cases entitles the complainant and the respondent to elect an administrative public hearing or a judicial determination of the case in state court. If neither party elects to go to state court, the complainant may either retain private counsel or be represented by one of the Commission's staff attorneys in further attempts at conciliation. In all other cases, a finding of Probable Cause sends the case to the Commission's legal division, where conciliation is attempted again.

4) Public Hearing. If further attempts at conciliation fail, the Commission convenes a Public Hearing, which is an adjudicatory hearing at which one of the three Commissioners presides. Both the complainant and respondent, or their representatives, present their cases at the public hearing. The presiding Commissioner enters an order based on the facts presented at the hearing. Both the complainant and the respondent have the right to appeal the decision to the full Commission and then to Superior Court on the basis of the record established at the Commission proceedings.

Settling a Case

The MCAD emphasizes the importance of settlement at every stage in the complaint process. Since it is in the interest of both parties to achieve a mutually agreeable resolution in a timely fashion, the Commission seeks to bring the complainant and respondent together as soon as possible to discuss settlement options. A case can be formally closed if a settlement agreement is made prior to a Commission determination. A settlement is not an admission of guilt or liability by either party.

A settlement is reached if both the respondent and the complainant make an agreement that is approved by the Commission. Settlement may occur at any point in the complaint process, and may be suggested by either or both parties, or by a representative of MCAD. A representative of MCAD reviews all settlements for fairness.

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

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MESSAGE FROM THE CHAIRMAN	1
WHAT IS MCAD?	2
NEW LEGISLATION AFFECTING MCAD	4
ORGANIZATION OF MCAD	5
Commissioners' Office.....	5
Division of Investigations.....	5
Public Sector Division.....	7
Control Division	8
Legal Division.....	9
COMMISSIONERS OF MCAD	10
MCAD OFFICES	12
MCAD Staff	13
Interns/Volunteers	13
State Advisory Board.....	13
THE COMPLAINT PROCESS	14

MESSAGE FROM THE CHAIRMAN

It is with great regret that we at MCAD report the seven-hundred-and-thirty-five-thousand-dollars in cuts sustained over the last two fiscal years is finally taking its toll on production at the Commission. MCAD will only close 2,000 cases this year, down from our all time high of 2,731 cases in 1989. Of even greater concern to the Commission is the fact that the drastic cuts in our budget have slowed the processing of the case from an average of 250 days in 1988 to over 350 days.

In effect, the people of Massachusetts have spoken. They voted to spend less on government. The result is the downsizing of MCAD from a full time staff of seventy to our present staff of forty this downsizing resulted in the unfortunate outcome mentioned above.

Yet, MCAD's management team is hard at work finding innovative ways to maintain a high average-case-closing-ratio per staff using new methodologies. MCAD's staff averages over seventy case closings per investigator which is among the highest in the nation. With specific targeting, we at MCAD will honor our commitment to the public to maintain confidence in our capability to deliver justice.

It should be noted that, while our budget has been decreased, the legislature has asked us to do more, by passing new legislation such as the 1987 Handicapped Act, by removing the mandatory retirement age, by passing additional housing legislation and by adding coverage of discrimination based on sexual orientation. We champion these new protections, and even with less, we continue to pledge to find the way to do more. This annual report is testimony to the fact that good management and hard work lead to the accomplishment of well developed goals. Once again, I congratulate the staff of MCAD for making our success possible.

Alex Rodriguez
Chairman

WHAT IS MCAD?

The Massachusetts Commission Against Discrimination was established in 1946 as the civil rights law enforcement agency for the Commonwealth of Massachusetts. Operating under a broad statutory mandate, the Commission is empowered to investigate and decide cases of discrimination in the areas of employment, housing, public accommodations, credit, services, and education. The Commission can receive complaints brought by individuals and organizations, and can initiate its own complaints. It has strong investigatory powers and clear authority to require remedies where discrimination has been found to exist.

As a law enforcement agency, the MCAD's goal is full compliance with civil rights laws and regulations. In addition to handling complaints, the Commission promulgates rules and regulations, monitors and assists businesses and governments in their civil rights compliance efforts, provides educational programs for law enforcement officials who have civil rights enforcement responsibilities, and actively promotes broad public understanding of human rights issues.

MCAD addresses discrimination on the basis of

- race
- color
- religious creed
- national origin
- ancestry
- sex
- sexual orientation
- age
- marital status
- persons with children
- handicap status
- source of income (receipt of public assistance)
- military/veteran status

MCAD has special responsibility for eliminating illegal discrimination in five major areas:

Employment

The Fair Practices Law protects the rights of Massachusetts workers to obtain and maintain employment free of discrimination. It is illegal for an employer to discriminate in advertising, hiring, discharge, or in any terms or conditions of employment.

Public and Private Housing

The Fair Housing Law prohibits discrimination in the sale, rental, or leasing of property, housing, or apartments, or in related services such as advertising, showing of property, or obtaining a mortgage.

Public Accommodations

It is illegal to deny services or access to any place whether licensed or unlicensed, which solicits or accepts the patronage of the general public (such as hotels, restaurants, stores, transportation, hospitals, etc.).

Credit and Service

Denial of credit based on race, color, religious creed, sex, marital status, children, national origin, ancestry, age, handicap, or status as a recipient of public assistance is illegal. Discrimination is also prohibited in advertising, loan approvals, and extending credit.

Educational Institutions

Massachusetts mandates equal educational opportunities in admission to any educational institution which accepts students or applications from the general public.

In addition to enforcing anti-discrimination law, the Governor's Executive Order 227 charges MCAD with additional responsibilities, including advising the Governor's Cabinet Officers on policy and practices relating to the Commonwealth's affirmative action mandates. This includes reviewing applications for public funds to ensure equality of opportunity for racial and ethnic minorities, women, and people with disabilities. The Commission is also responsible for monitoring the State's contract compliance program, which requires recipients of discretionary state funding to implement and enforce programs that guarantee equality of opportunity for minorities and women.

MCAD carries out its anti-discrimination and affirmative action mandates by:

- receiving and processing complaints of discrimination brought by individuals and organizations;
- educating the public through training programs, public speaking engagements, media campaigns, and participation in groups supporting human rights;
- reviewing the activities of Massachusetts municipalities in order to assess and encourage compliance with fair practices, and to ensure that no public funds are spent in a discriminatory manner or in support of discriminatory practices;
- initiating research activities and legal suits that may advance the rights of Massachusetts citizens.

NEW LEGISLATION AFFECTING MCAD

Budget

Several notable pieces of legislation affecting MCAD were enacted during Fiscal Year 1990. In June 1989, the Massachusetts legislature severely cut MCAD's budget. With state funding of MCAD reduced nearly to 1982 levels, MCAD was forced to lay off eleven staff members. Staff layoffs and other cutbacks have necessitated a significant reallocation of MCAD's resources.

On a separate budget item, Senator Bill Owens successfully introduced a rider to the state budget that allows MCAD to cover federal salaries between lapses in federal funding.

An Act Making it Unlawful to Discriminate on the Basis of Sexual Orientation

In November 1989, Governor Dukakis signed a law prohibiting discrimination on the basis of sexual orientation in the areas of employment, housing, credit and public accommodations. The law, endorsed by MCAD and co-sponsored by some 49 legislators, is the second state-wide statute in the nation prohibiting discrimination on the basis of sexual orientation. It adds a new protected category under the civil rights laws MCAD is charged with enforcing.

An Act Further Regulating Housing Rights for Certain Persons

In January 1990, Governor Dukakis signed a law extending civil rights protections to people with disabilities in the area of housing. Among other things, the law (1) strengthened MCAD's enforcement mechanisms; (2) authorized MCAD to impose civil penalties in housing cases; (3) authorized MCAD to award attorney's fees to prevailing complainants in all discrimination complaints; and (4) created a mechanism for either the complainant or respondent to remove a case to Superior Court. The new law significantly enhances MCAD's anti-discrimination mandate.

ORGANIZATION OF MCAD

The Massachusetts Commission Against Discrimination is organized into five sections: the Commissioners' Office, the Division of Investigations, the Public Sector Division, the Control Division, and the Legal Division. Department heads are located at the main offices in Boston. Satellite offices are located in New Bedford, Springfield, and Worcester.

Commissioners' Office

The Commissioners' Office is operated as a distinct section of the Commission. Commissioners are responsible for setting policy and deciding those cases that are not settled administratively. There are three Commissioners, one of whom chairs the Commission. The three Commissioners, sitting as a Commission, oversee the general operations of the entire Commission. Each of the commissioners is given primary responsibility for a particular region of the state. One is appointed from the western part of the state and serves in the MCAD's Springfield office; another carries special responsibility for Southeastern Massachusetts and assists the third Commissioner in overseeing the rest of the state.

The Executive Assistant to the Commissioners develops the Commissioners' schedules to ensure that they meet their many obligations, which include Full Hearings, Appeal Hearings, case management, Commission Meetings, managers' meetings, training activities, speaking engagements, and other civic activities. The Executive Assistant to the Commissioners also acts as the press officer and the affirmative action officer for the agency.

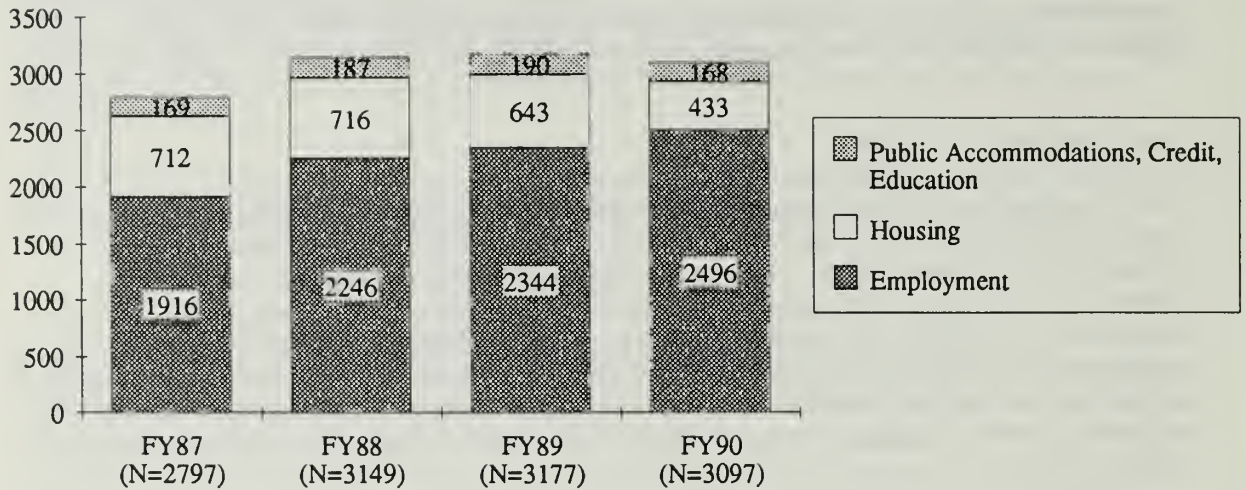
Division of Investigations

The Division of Investigations receives and investigates all complaints brought to MCAD. Legislation that cut MCAD's budget in 1989 made it necessary to reallocate staff resources. As a consequence, the Division of Investigations acquired the responsibilities of the Public Sector Division's Housing Investigations Unit, which was dismantled in May 1990. The Division of Investigations now investigates all complaints concerning discrimination in education, employment, private and public housing, credit, and public accommodations.

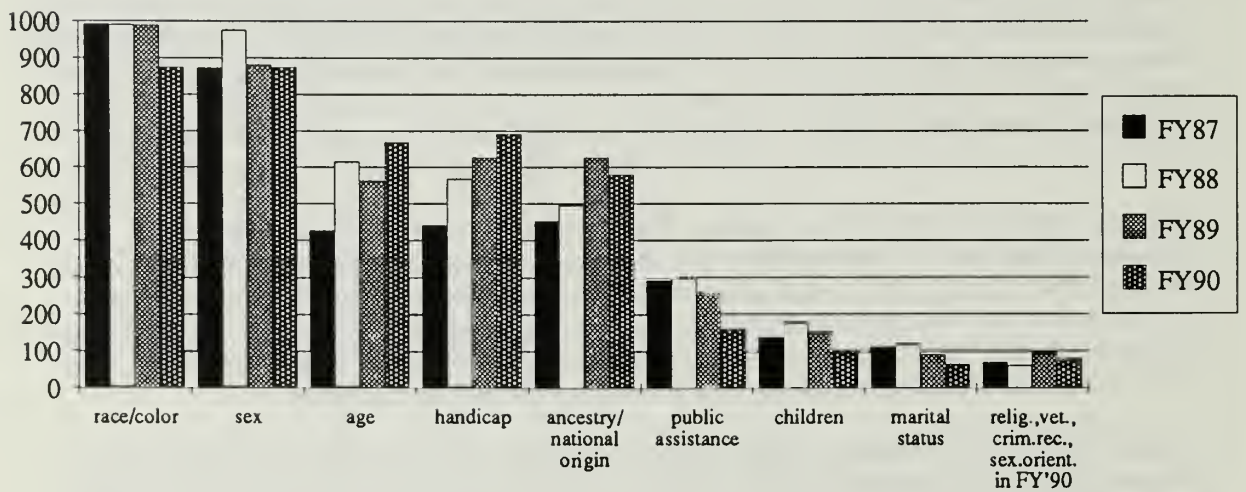
In its investigations, the Division utilizes Fact-Finding Conferences, interrogatories, personal interviews, and on-site visits to search out information concerning allegations of discrimination. During the investigation stage, the Division may provide an invaluable service to both the complainant and the respondent by airing their concerns and helping to defuse the matter. Investigators strive to both improve conditions and practices in the work place and to assist parties in arriving at a mutually satisfactory resolution.

Despite budgetary constraints, MCAD boasts a high rate of success in favorably resolving its complaints. At 25 percent, MCAD's rate of Probable Cause findings is approximately ten percent higher than national rates of Probable Cause findings. When viewed in tandem with settlements, MCAD's rate of case closure in favor of the complainant is between 40 and 50 percent. This ratio is significantly higher than the national averages on case closures of this kind.

**Number of Complaints Filed with MCAD
for FY 1987, 1988, 1989 & 1990
by Type of Complaint**



**Number of Complaints Filed with MCAD
for FY 1987, 1988, 1989 & 1990
by Basis of Complaint**



Intern Program

During the past several years, MCAD's work load has grown considerably. Since state funding of MCAD has not increased to match added demands on the agency, the Division of Investigations developed a volunteer intern program to help meet its staffing needs. Most volunteer interns work in Investigations, although several have worked in MCAD's other divisions.

Applications to become student interns are received from colleges around the country. Investigations interns are given a week-long training session at MCAD and are then assigned cases which they process and write up under close staff supervision. The program not only helps MCAD manage its case load, it also develops a pool of people knowledgeable about civil rights issues. The intern program has received warm responses from its many participants.

Public Sector Division

The Public Sector Division of MCAD is comprised of two units: *Systemic Fair Housing Testing and Enforcement*, and *Civil Rights Review*. Due to budgetary constraints, the Public Sector Division's Housing Investigations Unit was dismantled in May 1990, and its responsibilities were assigned to the Division of Investigations.

Systemic Fair Housing Testing and Enforcement Program

Over the past several years, MCAD significantly expanded the operations of its Systemic Fair Housing Testing and Enforcement Program. The Systemic Program aims to combat large-scale, institutionalized housing discrimination in Massachusetts. The Systemic Program accomplishes this objective through two major program initiatives: 1) a Testing Program, in which housing providers in particular geographic areas are investigated for compliance with the fair housing laws by the use of matched sets of individuals who pose as homeseekers; and 2) an Enforcement Program, in which housing discrimination complaints are brought against those agencies found to discriminate.

Major accomplishments of the past several years include:

- Testing Program conducted in Framingham that investigated discrimination against blacks, Hispanics, and rental subsidy recipients. Complaints initiated against six real estate agencies and one property management company on the basis of the Testing Program's results.
- Framingham complaints investigated, resulting in Probable Cause findings and the issuance of a formal report entitled *Housing Discrimination in the Rental Market: A Report on the Barriers Faced by Women with Rental Subsidies, Blacks, and Hispanics*.
- Testing Program conducted in Waltham and Medford that investigated discrimination against blacks, rental subsidy recipients, and families with children. Complaints initiated against seven Waltham real estate agencies and four Medford agencies.
- Majority of Framingham cases settled, with realty agencies agreeing to house an affirmative number of minority and female-headed households and to fund the position of a full-time fair housing monitor for two years to oversee their efforts.
- A number of Waltham/Medford cases settled, with agencies agreeing to different affirmative remedies, including the funding of a staff person for the Greater Boston

Civil Rights Coalition to oversee the implementation of a federal judicial order requiring metropolitan-wide programs to promote minority access to Boston's suburban communities.

MCAD's program has been primarily funded through competitive grants received from the U.S. Department of Housing and Urban Development. In 1990, the Systemic Program became one of 25 finalists out of 1500 applicants for a grant jointly sponsored by the Ford Foundation and the John F. Kennedy School of Government at Harvard University.

Civil Rights Review Unit

The Civil Rights Review Unit is the conduit through which grant recipients achieve compliance with prevailing requirements. The Unit has two primary functions: one is overseeing the compliance of municipal governments and other aims of government with state affirmative action guidelines; the second is monitoring the state's contract compliance program, which requires recipients of discretionary state funding to implement and enforce programs that guarantee equality of opportunity for minorities and women.

The Unit attempts to assist grant applicants in resolving affirmative action issues before they are litigated by working directly with municipalities in developing and implementing fair housing, equal employment, contract compliance, and minority/women business enterprise plans and materials. Proper plan development and implementation are necessary in order to qualify for federal and state grants.

A recent court decision in *NAACP, Boston Chapter v. Jack Kemp, Secretary of U.S. Housing and Urban Development, et al.* has had an impact on the responsibilities of the Public Sector Division of MCAD. In its decision, the court ruled that HUD had failed to properly monitor and administer its responsibilities in the area of fair housing. Part of the court's remedy includes requirements for HUD and the City of Boston to implement housing programs for affirmative outreach to minorities in the Boston Metropolitan Statistical Area. MCAD has developed base program requirements for compliance with the court's order and is pursuing a cooperative relationship with the parties charged in the case.

Control Division

Established in 1977 and expanded in 1987, the Control Division incorporates the financial and administrative functions of MCAD. As the planning and monitoring arm of the Commission, the Control Division provides information and recommendations on management of the agency's case load. The Control Division develops and manages the Commission's budget, which includes three yearly contracts from MCAD's federal counterparts, the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD). In addition, the Division oversees the administrative support functions of the Commission.

The Control Division maintains an agency-wide computer system that allows complaints to be input directly on computers as they are received. Complaints and other correspondence are automatically forwarded to parties through the use of programs specifically designed for MCAD. The Division's computerized management information system allows tracking of individual cases and case flow and provides statistical information on trends in the number and type of cases being filed and closed at the Commission.

Terrence Morris, MCAD's Deputy Director of Administration, was awarded one of the Commonwealth's Pride in Performance Awards in 1989 for his accomplishments in the Control Division. The award is given annually to acknowledge outstanding achievements by state workers in the Commonwealth of Massachusetts.

Legal Division

The Legal Division serves as in-house counsel to the Commission. Duties of the legal staff are varied and include advising investigators on complex investigations, reviewing investigative recommendations, attempting conciliation following a Probable Cause finding, and prosecuting cases to public hearing when conciliation fails. Commission attorneys also represent the Commission in court.

Some legal decisions during FY 1990 include:

- In *Worcester Housing Authority v. MCAD*, the Supreme Judicial Court upheld a Commission determination that protections based on marital status are inclusive of unmarried couples.
- In *Lynn Teachers Union, Local 1037 v. MCAD*, the Supreme Judicial Court upheld a Commission ruling that the union's failure to credit seniority to female employees who had been unlawfully forced to resign due to pregnancy was discriminatory.

COMMISSIONERS OF MCAD

The MCAD is led by three commissioners who are appointed by the Governor for overlapping three-year terms. Each Commissioner is responsible for a particular geographic portion of the state.

Commissioner Alex Rodriguez, Chairman

Alex Rodriguez, a graduate of Goddard College and a former Loeb Fellow at Harvard University, served as a member of the Commission from 1977 to 1981. In 1984, he was appointed to a three-year term as Chairman of the Commission by Governor Michael S. Dukakis, and was subsequently reappointed to second and third three-year terms in 1987 and 1990, respectively. He was previously Monitor for Special Education in Boston for the Massachusetts Superior Court, and Vice President of the United Community Planning Corporation.

Commissioner Rodriguez is President of the United Lower Roxbury/South End Community Development Corporation and has served for many years as a Board Member of the Massachusetts and National Associations for Mental Health. He is active in community issues in the areas of bilingual education, community development, and multi-cultural and multi-group citizen involvement on the local, state, and national levels.

As Chairman of the Commission, Commissioner Rodriguez is responsible for the overall management of the agency.

Commissioner Frederick Hurst

Frederick Hurst, the Western Massachusetts appointee to the Commission, was first appointed by Governor Dukakis in 1984, and was reappointed in 1986 and 1989. Commissioner Hurst holds a Bachelor's degree from Howard University, studied for a doctorate at the University of Massachusetts, and received his law degree from De Paul University. He has clerked in the Office of the Illinois Attorney General, and, prior to his appointment to MCAD, he was an attorney with the Massachusetts Defenders Committee in Springfield.

Commissioner Hurst is extensively involved in community activities in Western Massachusetts and has served on the Board of the Urban League, as an Incorporator of the Springfield Harambee Cultural Festival, and as publisher of a community newsletter.

Commissioner Hurst manages the MCAD's Springfield and Worcester offices and has special responsibility for the Western Massachusetts activities of the Commission.

Commissioner Kathleen Allen

Kathleen Allen was appointed to the Commission by Governor Dukakis in 1985 and was reappointed in 1988. She is based in the Boston office and carries special responsibility for

Southeastern Massachusetts. Commissioner Allen is a graduate of Lake Erie College and holds a master's degree and a law degree from Boston University. Prior to her appointment to the Commission, she served as private counsel for an NAACP-sponsored lawsuit on voting issues, was senior attorney with the Georgia Legal Services Program, and was a staff attorney with Greater Boston Legal Services. In addition, she was one of the founders of the first women's law collective in the United States, and she practiced law for five years with a general practice firm in Cambridge, Massachusetts.

Commissioner Allen has a broad background in teaching law. She was Joshua A. Guberman Fellow and Lecturer in Legal Studies at Brandeis University, and she has taught courses on sex-based discrimination at Boston College Law School, Boston University Metropolitan College, and the University of Massachusetts. In addition, she has been a clinical instructor of law at Harvard University Law School.

Recently, Commissioner Allen served on an interagency task force on the state's sexual harassment policy. Based on the task force's recommendations, the state's policy was expanded to incorporate specific procedures for identifying, reporting, and investigating instances of sexual harassment in state government.

Commissioner Allen chairs an interagency task force on AIDS. The task force, comprised of both federal and state agencies, looks at ways to resolve policy issues and to take inter-agency initiatives related to AIDS. The task force is currently working on a pamphlet detailing agency resources for people with AIDS. Commissioner Allen is also a member of a committee focusing on issues of civil rights and police conduct in Bristol County. The committee will be conducting training seminars for police officers next fall.

MCAD OFFICES

The main office of the Massachusetts Commission Against Discrimination is located in Boston. The Commissioners meet regularly in this office, and the staff of the Commission is managed from this location. MCAD also maintains offices in Worcester, Springfield, and New Bedford. All of the Commission's offices are open to receive telephone inquiries on weekdays from 8:45 AM to 5:00 PM; days on which complaints are accepted vary from office to office. Addresses and telephone numbers of MCAD offices are as follows:

Boston Office
617/727-3990

Sixth Floor, One Ashburton Place
(McCormick State Office Building)
Boston, MA 02108

Worcester Office
508/752-2272

129 Lincoln Street
Worcester, MA 01605

Springfield Office
413/739-3330 or
413/739-2145

145 State Street
Springfield, MA 01103

New Bedford Office
508/997-3191

53 North 6th Street, Room 203
New Bedford, MA 02740

MCAD has a strong network of regional advisory councils across the state. The Statewide Advisory Board, appointed by the Governor, coordinates the activities of the regional advisory councils, reviews the implementation of the Commission's programs and policies, and advises both the Commission and the Governor on matters of policy affecting the Commission. Board and Council members serve without compensation.

The regional advisory councils are based in Boston, Cape Cod, Lawrence, New Bedford, Pittsfield, and Worcester. These Councils include representatives of major lending and credit institutions; major private employers; local post-secondary educational institutions; labor organizations; owners and brokers of residential property; local personnel or civil service administrators; women; racial, ethnic, and linguistic groups; elderly persons; persons with disabilities; and recipients of public assistance.

MCAD Staff (FY 1990)

Elizabeth Addivinola
 John Ahearn
 Kathleen Allen
 Luther Allen
 Teresa Angers
 Nancy Barnes
 Beth Cabral
 Laura Canty
 Peter Cardia
 Alan Cassella
 Jeannette Christy
 Jean Clanton
 Sylvia Cohen
 Diane Cote
 Judith Cummings
 Vivian doCarmo
 Sharyn Dreyer

Marlen Garcia
 Eugenia Guastaferrri
 Edda Howard
 Frederick Hurst
 Marlania Jones
 Judith Kaplan
 Jerrold Levinsky
 Edie Lockhart
 Denise Lussier
 Katherine Martin
 Melvina Monteiro
 Terrence Morris
 Jean Musiker
 Wah Don Ng
 Carolyn Packard
 Lorenzo Parra
 Margot Perry
 Susan Ponte
 Victor Posada

John Ramos
 Migdalia Rivera
 Alex Rodriguez
 Concetta Rossetti
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 Debra Feldstein
 Henry Fernandez
 Dustin Forand
 Lyndia J. German

Troy Glover
 Darren Goldfarb
 Brenda Goodrich
 Bryan Greene
 Alba Guzman
 Anurada Hebbar
 Kristen Hertz
 Allison Hill
 C. Paige Hinkson
 Allison Jacobson
 Julia Kogan
 Katherine Lamothe
 Carole Landers
 Michael Levin
 Lami Levy
 Anne Maloney
 Natasha Maynard

Jason Monroe
 Surekha Paruchur
 Delilah S. Paseos
 Lakhana Peou
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may convene a Fact-Finding Conference at which the complainant and respondent, as well as appropriate witnesses, are present.

3) Causal determination. Based on the information obtained during the investigation process, the Investigating Commissioner makes a finding of either *Probable Cause* or *Lack of Probable Cause*. A finding of Probable Cause is made when the Investigating Commissioner concludes that there is sufficient evidence upon which a fact-finder could form a reasonable belief that the respondent committed unlawful discrimination. Such a finding reserves disputes involving genuine issues of material fact for determination at a public hearing. The complainant has the right to appeal a determination of Lack of Probable Cause by filing a request within ten (10) days of the initial determination.

A finding of Probable Cause entitles the complainant and the respondent to elect an administrative public hearing or a judicial determination of the case in state court. If neither party elects to go to state court, the complainant may either retain private counsel or be represented by one of the Commission's staff attorneys in further attempts at conciliation.

4) Public Hearing. If further attempts at conciliation fail, the Commission convenes a Public Hearing, which is an adjudicatory hearing at which one of the three Commissioners presides. Both the complainant and respondent, or their representatives, present their cases at the public hearing. The presiding Commissioner enters an order based on the facts presented at the hearing. Both the complainant and the respondent have the right to appeal the decision to the full Commission and then to Superior Court on the basis of the record established at the Commission proceedings.

Settling a Case

The MCAD emphasizes the importance of settlement at every stage in the complaint process. Since it is in the interest of both parties to achieve a mutually agreeable resolution in a timely fashion, the Commission seeks to bring the complainant and respondent together as soon as possible to discuss settlement options. A case can be formally closed if a settlement agreement is made prior to a Commission determination. A settlement is not an admission of guilt or liability by either party.

A settlement is reached if both the respondent and the complainant make an agreement that is approved by the Commission. Settlement may occur at any point in the complaint process, and may be suggested by either or both parties, or by a representative of MCAD. A representative of MCAD reviews all settlements for fairness.

FISCAL YEAR 1991

ANNUAL REPORT

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Governor William Weld
Lieutenant Governor Paul Cellucci
Members of the General Court
Citizens of the Commonwealth,

IN ACCORDANCE WITH THE MASSACHUSETTS GENERAL Laws, Chapter 151(B), Section 3, I am pleased to present to you the annual report for the Massachusetts Commission Against Discrimination.

The end of Fiscal Year 1991 finds the MCAD at a crossroads in its history. The deep cuts in state appropriations the Commission had sustained under the previous administration have stopped, and the MCAD's budget and staff size have stabilized. In Fiscal Year '92, by recommendation of Governor Weld with the concurrence of the Legislature, the agency is essentially level funded.

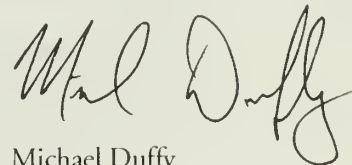
The challenge now is to fulfill our mandate as the Commonwealth's chief civil rights agency with a staff that is less than half the size it was seven years ago. Some of the old ways of doing things that had served the MCAD well in the past break down when working with fewer resources and a caseload topping 6,500. During the first year of my tenure as Chairman of the Commission, I have established three priorities:

- 1) improving the quality of justice the MCAD metes out in investigation, prosecution and hearing of complaints of discrimination filed at the Commission;
- 2) reaching out to "newly enfranchised" groups who have only recently been accorded civil rights protections, including lesbians and gay men, persons with disabilities, and persons with AIDS;
- 3) helping African American, Latino, Asian American, and women owned businesses to get their fair share of the work generated by publicly funded projects, including the construction of the third harbor tunnel and the central artery depression.

To these ends, I have taken the following actions since I took office on March 14, 1991:

- I took an immediate 20 percent pay cut upon being sworn in, effective to the end of the fiscal year, in order to free funds to help close cases
- the MCAD has engaged the management consulting firm of Arthur Anderson to do a pro bono management audit of the Commission
- the Commission has recruited over 50 volunteers to assist in our work
- I have convened an "AIDS Ombudsman" group to regularly review our progress in investigating open AIDS/HIV discrimination cases
- the Commission has begun the process of reviewing the effectiveness of current public accommodations regulations for the Commonwealth's citizens with disabilities
- the Commission is making plans to assist in conducting a disparity study to support Minority and Women Business Enterprise programs throughout the entire Executive Branch
- under the leadership of former Commissioner Kathleen Allen, the MCAD conducted a series of public hearings to gather evidence in support of minority and women business enterprises. The resulting document will serve as a cornerstone in any future legal defense of such programs.

As Chairman, I am constantly evaluating and re-evaluating the way the Commission does business, with an eye toward greater efficiency and increased effectiveness. We need to rethink not our mission but our methodology, for ultimately the MCAD must innovate and adapt if it is to remain a viable civil rights enforcement agency.



Michael Duffy
Chairman

SIX YEARS BEFORE THE CIVIL WAR, THE COMMONwealth of Massachusetts first pioneered laws forbidding discrimination in public education and public accommodations. These noteworthy efforts, however, failed to address discriminatory practices in the workplace. Employment discrimination in 1855 was not only legal in Massachusetts, but was commonly practiced.

The Commonwealth's first enforcement agency for civil rights legislation, the Fair Employment Practices Commission, was founded in 1946. In 1950, the Commission's name was changed to the Massachusetts Commission Against Discrimination (MCAD). In the mid-1970's, the structure changed from four part-time commissioners to three full-time commissioners. The MCAD grew substantially throughout the 1960's and 1970's as the agency absorbed increasing responsibility under jurisdictional changes resulting from new state and federal laws. The MCAD's budget and staff increased steadily until the mid-1980's, when budget restrictions forced cutbacks. The MCAD's workload has continued to expand despite these cutbacks.

The MCAD's goal is full compliance with civil rights laws and regulations. The Commission is empowered to investigate and decide cases of discrimination in the areas of employment, housing, public accommodations, credit, services, and education. In addition to handling complaints, the Commission promulgates rules and regulations; monitors and assists businesses and governments in their civil rights compliance efforts; sponsors educational programs for law enforcement officials who have civil rights enforcement responsibilities; and actively promotes broad public understanding of human rights issues.

The MCAD addresses discrimination on the basis of:

- | | |
|----------------------|--------------------------------|
| • race | • age |
| • color | • marital status |
| • religious creed | • persons with children |
| • national origin | • disability |
| • ancestry | • receipt of public assistance |
| • sex | • military/veteran status |
| • sexual orientation | • criminal record |

Executive Order 227 charges the MCAD with additional responsibilities, including advising the Governor's Cabinet Officers on policy and practices relating to the Commonwealth's affirmative action mandates. This includes reviewing the applications of cities and towns for public funds to ensure equality of opportunity for racial and ethnic minorities, women, and people with disabilities. The Commission is also responsible for monitoring the State's contract compliance program, which requires recipients of discretionary state funding to implement and enforce programs that guarantee equality of opportunity for minorities and women.

MCAD carries out its anti-discrimination and affirmative action mandates by:

- receiving and processing complaints of discrimination brought by individuals and organizations;
- educating the public through training programs, public speaking engagements, media campaigns, and participation in groups supporting human rights;
- reviewing the activities of Massachusetts municipalities in order to assess and encourage compliance with fair practices, and to ensure that no public funds are spent in a discriminatory manner or in support of discriminatory practices;
- initiating research activities and legal suits that may advance the rights of Massachusetts citizens.

During the past decade, Massachusetts has continued to lead the nation in the area of civil rights. Persons with disabilities were accorded protection under the state's civil rights laws in 1983—nearly a full decade before passage of the national Americans with Disabilities Act. AIDS was subsequently classified as a disability, thereby protecting persons with AIDS from discrimination under the disability law. In 1989, the Commonwealth enacted one of the country's first state-wide sexual orientation laws, guaranteeing civil rights protections to lesbians and gay men in housing, employment, public accommodations and credit.

Commissioners' Office

Commissioners are responsible for setting policy for the MCAD, determining if there exists probable cause to believe discrimination occurred, and hearing cases. Each of the three Commissioners is given primary responsibility for a particular region: one is appointed from the western part of the state and serves in the MCAD's Springfield office; another carries special responsibility for southeastern Massachusetts; the third oversees the administration of the Boston area.

Division of Investigations

The Division of Investigations receives and investigates complaints concerning discrimination in education, employment, private and public housing, credit, and public accommodations. In its investigations, the Division utilizes Fact-Finding Conferences, interrogatories, personal interviews, and on-site visits to search out information concerning allegations of discrimination. During the investigation stage, this Division may provide an invaluable service both to the complainant and the respondent by airing their concerns and helping to defuse the matter. Investigators strive to improve conditions and practices in the work place and to help parties arrive at a mutually satisfactory resolution without having to go to public hearing.

Program & Administration Division

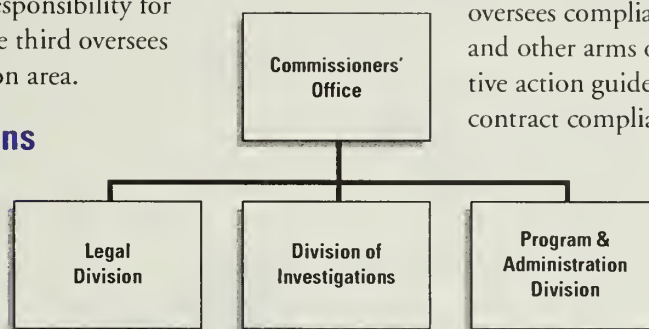
Systemic Fair Housing Testing and Enforcement Program

This program aims to combat large-scale, institutionalized housing discrimination in Massachusetts through two major program initiatives: 1) a Testing Program, which investigates housing providers in particular geographic areas for compliance with fair housing laws;

and 2) an Enforcement Program, which brings housing discrimination complaints against those agencies found to discriminate.

Civil Rights Review Unit

The Civil Rights Review Unit is the conduit through which grant recipients achieve compliance with prevailing requirements. The Unit has two primary functions: 1) it oversees compliance of municipal governments and other arms of government with state affirmative action guidelines; 2) it monitors the state's contract compliance program, which requires recipients of discretionary state funding to implement and enforce programs that guarantee equality of opportunity for minorities and women.



Control Unit

The Control Unit incorporates the financial and administrative functions of MCAD. As the planning and monitoring arm of the Commission, the Control Unit provides information and recommendations on management of the agency's case load. The Control Unit develops and manages the Commission's budget, which includes three yearly contracts from MCAD's federal counterparts, the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD). In addition, the Unit oversees the administrative support functions of the Commission.

Legal Division

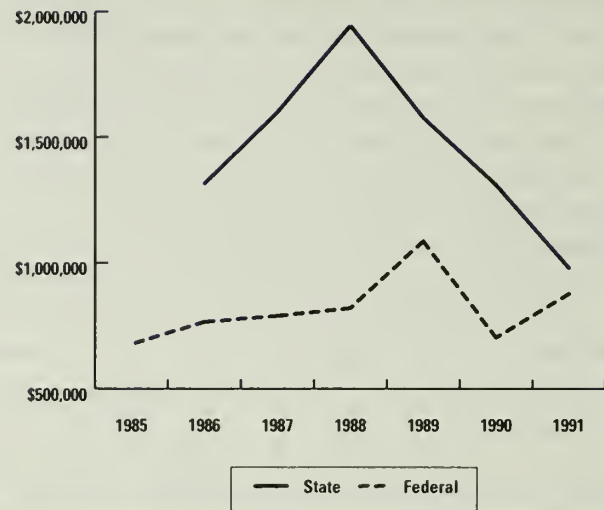
The Legal Division serves as in-house counsel to the Commission. Duties of the legal staff are varied, and include advising investigators on complex investigations, reviewing investigative recommendations, attempting conciliation following a Probable Cause finding, and prosecuting cases to public hearing when conciliation fails. Commission attorneys also represent the MCAD in court.

IN 1979, THE MASSACHUSETTS COMMISSION Against Discrimination was appropriated \$975,000 by the Commonwealth of Massachusetts. In 1991, fully twelve years later, state funding has risen to \$1,156,000—an increase of only \$181,000. During this same period, the number of complaints filed at the Commission increased more than 50 percent. A decade and a half of underfunding poses great challenges for the MCAD in fulfilling its obligations and responsibilities.

One of the ways the Commission has responded to the paucity of state funding is by seeking funds from the federal government. Federal funds to the Commission have increased from \$690,000 in 1979 to \$860,000 in fiscal year 1991. These funds, which are disbursed by the Federal Department of Housing and Urban Development (HUD) and the Equal Employment Opportunity Commission (EEOC), are predicated on the number of investigations and case closures achieved by the MCAD each year. The Commission is currently using every means available to maximize federal funding in Fiscal Year 1992.

The Commission has sought to augment state and federal appropriations with private resources, both financial and in-kind. The Commission has applied for grants from the Ford Foundation, and currently is a finalist for a grant from the Massachusetts Bar Foundation. Volunteers to the Commission have been recruited to assist with the backlog created by the reduction in staff. This summer, over 50 interns have been deployed to assist in investigating and closing backlogged cases. The Massachusetts legal community is being tapped to represent complainants whose cases are going to Public Hearing. Volunteers across the state are being trained to take complaints at locations outside of MCAD offices.

State and Federal Appropriations



MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION FISCAL YEAR 1991 BUDGET

Funding

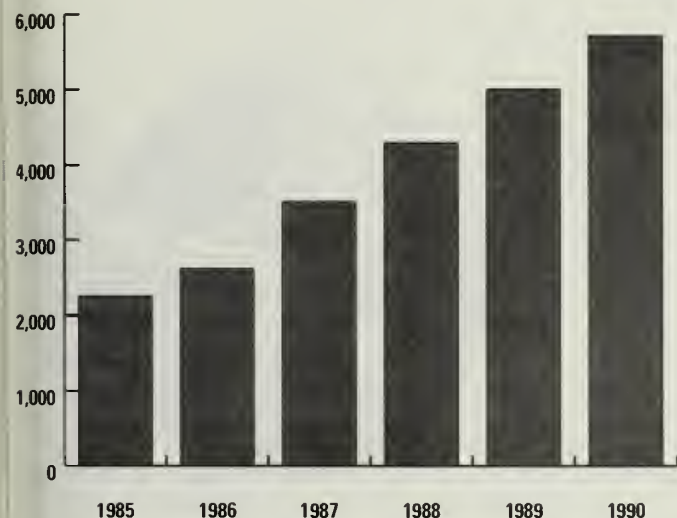
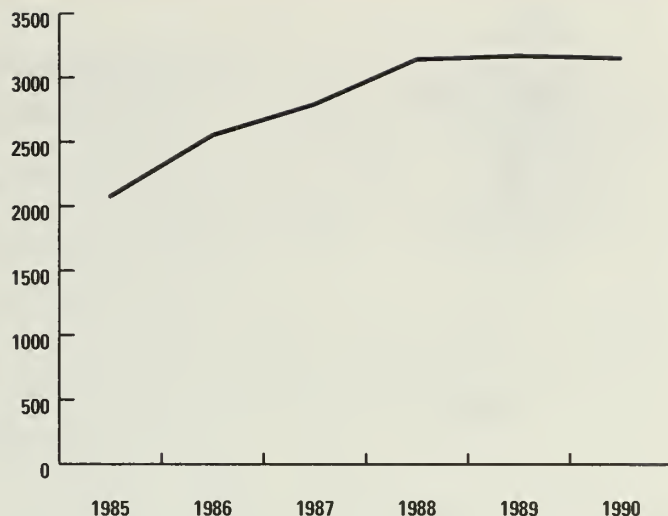
State Administration.....	\$ 985,000
State Retained Revenue	96,000
State Welfare Contract.....	75,000
<i>Subtotal, State Funding.....</i>	<i>1,156,000</i>
Federal HUD Title VIII	283,000
Federal HUD FHIP Grant I.....	34,000
Federal HUD FHIP Grant II	65,000
Federal Equal Employment Contract	481,000
<i>Subtotal, Federal Funding.....</i>	<i>863,000</i>
Total Commission Funding.....	\$2,019,000

Expenses

Personnel.....	\$1,320,000
Contract Personnel	250,000
Other Personnel Costs.....	190,000
Office Rent	28,000
Telephone.....	25,000
Equipment Maintenance	51,000
Office Supplies	136,000
Travel	6,000
Postage	13,000
Total Expenses	\$2,019,000

Cases Filed

If current trends continue through the end of calendar year 1991, over 3,600 cases will be filed at the Massachusetts Commission Against Discrimination—an all-time record. This figure is up from 3,100 filings in 1990, and 3,200 in both 1988 and 1989. Complaint filings in the past typically have increased during economic downturns, and this recession appears to be no exception.

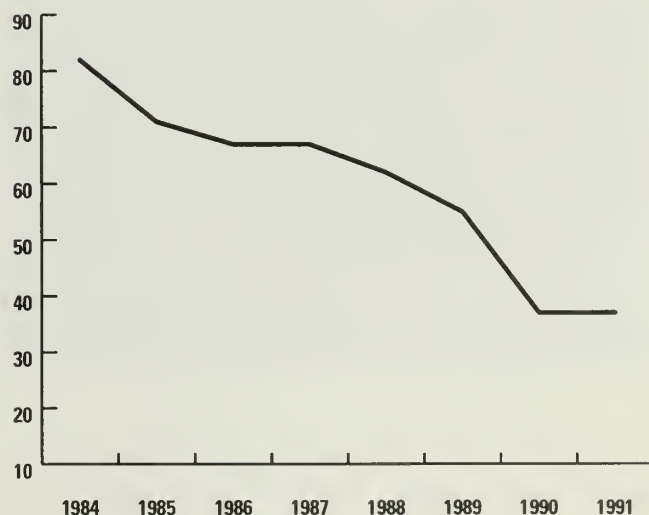


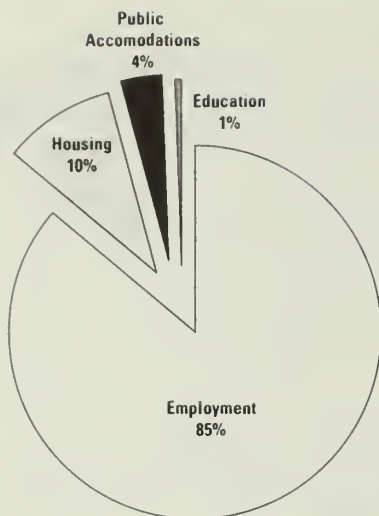
Case Inventory

The case inventory—the number of open cases at the Commission—reached 6,000 in 1990, and currently stands at approximately 6,500. The backlog is the predictable result of several years of steady or increased case filings, decreased staff and resources, and unmodified operating procedures. The backlog will only be reduced when the MCAD's resources are increased and when the Commission's ability to more efficiently investigate and prosecute cases improves.

MCAD Staff

The number of staff at the MCAD has declined precipitously over the last four to eight years. The Commission's current staffing level is less than half what it was six years ago. The MCAD appears especially lean when compared with the full-time staffing levels of its counterparts in Connecticut and New York State.





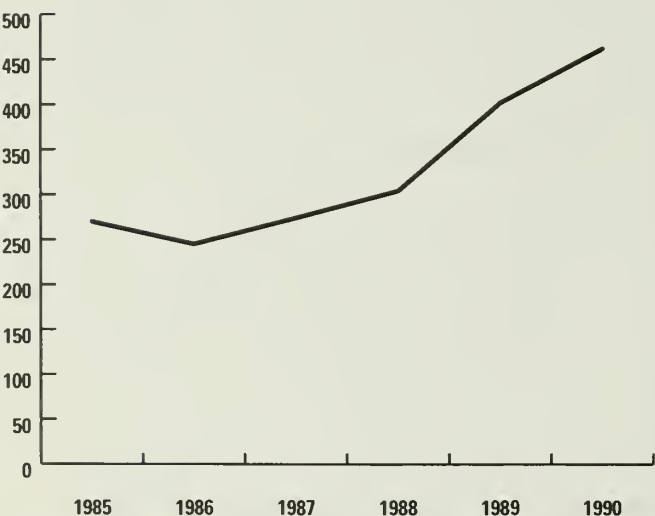
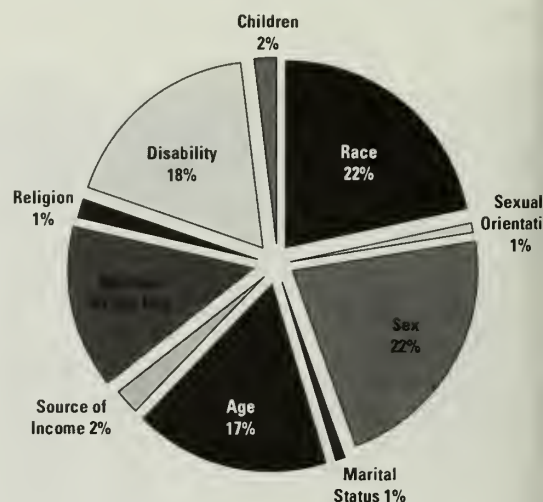
Complaints by Type

The number of complaints filed at the Massachusetts Commission Against Discrimination varies directly with ups and downs in the business cycle. As the economy in Massachusetts has worsened, rising unemployment, increases in the amount of time it takes to find employment, and a sluggish housing market have affected the types of cases being filed at the MCAD. Complaints of discrimination in employment are up dramatically. With every new round of layoffs, the MCAD receives a spate of claims of employment discrimination. Employment cases now constitute roughly 80 percent of the claims filed. Conversely, the weak housing market seems to have resulted in a decline in the number of housing discrimination complaints being filed.

Complaints by Protected Class

Changes in the make-up of complaints at the MCAD reflect the new protected classes the legislature has added under Massachusetts anti-discrimination laws. One of the most dramatic changes has been the steady increase in the number of persons with disabilities who are filing claims. Whereas a little less than a decade ago persons with disabilities had no standing for filing at the MCAD, disability cases now constitute roughly 20 percent of the complaints filed annually.

Another trend is the increase in the number of age-related complaints, which may be attributable either to demographic changes or layoffs. In the future, the Commission expects to see a significant increase in the number of sexual orientation, maternity leave, and sexual harassment cases, if current trends continue.



Number of Days to Closure

One of the most troubling developments at the MCAD over the last four years has been the increase in the average number of days it takes to close a case. In calendar year 1990, the average case took roughly 460 days to be resolved. The Commission views this figure as unacceptably high, and is dedicated to speeding up case processing.

AN INDIVIDUAL WISHING TO FILE A COMPLAINT should contact the nearest MCAD office to meet with an investigator and give a summary of the specific acts of alleged unlawful discrimination, including:

- the dates on which the alleged discriminatory acts occurred;
- a list of the names, titles, business addresses, and telephone numbers of persons charged with committing unlawful discrimination;
- names of witnesses, if any;
- any supporting documentation, such as notices, leases, and comparative data;
- details of any financial losses suffered as a result of the alleged unlawful discrimination.

If the complaint falls within the Commission's jurisdiction, the investigator drafts a formal complaint based on the information provided by the complainant. The complaint is mailed to the respondent (individual or organization) charged with committing the discriminatory act, who is asked to respond to the allegations.

Investigation

Based on the respondent's answers to the complaint, the investigator advises whether there is a reasonable basis for settlement. A Settlement Conference may be convened with both the complainant and the respondent. Many cases are closed in this manner.

If the case is not settled at this stage, the investigator commences further investigation through various means, including interrogatories and document requests. The investigator may convene a Fact-Finding Conference at which the complainant and respondent, as well as appropriate witnesses, are present.

Causal Determination

Based on the information obtained during the investigation process, the Investigating Commissioner makes a finding of either Probable Cause or Lack of Probable Cause.

If Probable Cause is found, the complainant and the respondent may elect an administrative public hearing or a judicial determination of the case in state court. If neither party elects to go to state court, the complainant may either retain private counsel or be represented by one of the Commission's staff attorneys in further attempts at conciliation.

If a Lack of Probable Cause determination is made, the complainant may appeal the finding by filing a request within ten (10) days of the initial determination.

Public Hearing

If further attempts at conciliation fail, the Commission convenes a Public Hearing at which one of the three Commissioners presides. Both the complainant and respondent, or their representatives, present their cases at the public hearing. The presiding Commissioner enters an order based on the facts presented at the hearing. Both the complainant and the respondent have the right to appeal the decision to the full Commission and then to Superior Court on the basis of the record established at the Commission proceedings.

Early Resolution Process

The MCAD emphasizes the importance of settlement at every stage in the complaint process. Since it is in the interest of both parties to achieve a mutually agreeable resolution in a timely fashion, the Commission seeks to bring the complainant and respondent together as soon as possible to discuss settlement options. A case can be formally closed if a settlement agreement is made prior to a Commission determination. A settlement is not an admission of guilt or liability by either party. This fall, the staff of the Investigations and Legal Divisions will undergo training designed to improve their mediation and conciliation skills.

Commissioner Michael Duffy, Chairman

Michael Duffy was appointed to a three year term as Chairman of the Commission by Governor William F. Weld in March 1991. Commissioner Duffy is a Phi Beta Kappa graduate of Trinity College, where he received a Bachelor's degree in Economics. Before graduating, Duffy worked as a research assistant in both the Connecticut Legislature and the British House of Commons. In 1987, he earned a Master's Degree in Public Policy from Harvard University's Kennedy School of Government. Prior to his appointment to the Commission, Duffy had worked for Congressman Christopher Shays, the Massachusetts Republican Party, and a non-profit agency—Little Brothers—Friends of the Elderly.

Commissioner Duffy is actively involved in the community. He is a member of the Coalition for Lesbian and Gay Civil Rights, and he serves on the Board of Governors of the Log Cabin Club. Commissioner Duffy is based in the Boston office, and carries special responsibility for the greater Boston area. As Chairman, he is responsible for the overall management of the agency.

Commissioner Alex Rodriguez

Alex Rodriguez, a graduate of Goddard College and a former Loeb Fellow at Harvard University, served as a member of the Commission from 1977 to 1981. In 1984, he was appointed to a three-year term as Chairman of the Commission by Governor Michael S. Dukakis, and he was subsequently reappointed to second and third terms in 1987 and 1990. He was previously Monitor for Special Education in Boston for the Massachusetts Superior Court, and Vice President of the United Community Planning Corporation.

Commissioner Rodriguez is President of the United Lower Roxbury/South End Community Development

Corporation, and has served for many years as Board Member of the Massachusetts and National Associations for Mental Health. He is active in community issues in the areas of bilingual education, community development, and multi-cultural and multi-group citizen involvement on the local, state, and national levels.

Commissioner Rodriguez resigned in July 1991.

Commissioner Frederick Hurst

Frederick Hurst, the Western Massachusetts appointee to the Commission, was first appointed by Governor Dukakis in 1984, and was reappointed in 1986 and 1989.

Commissioner Hurst holds a Bachelor's degree from Howard University, studied for a doctorate at the University of Massachusetts, and received a law degree from De Paul University. He has clerked in the Office of the Illinois Attorney General and, prior to his appointment to the MCAD, he was an attorney with the Massachusetts Defenders Committee in Springfield.

Commissioner Hurst is extensively involved in community activities in western Massachusetts, and has served as a member of the Board of Directors and Executive Committee of Springfield Central; Trustee of the Bay State Medical Center, and of the Springfield Library & Museum Association; Member of the Board of Directors

of the Community Music School of Springfield, the Community Mental Health Center of Springfield, and the Springfield Urban League; Member of the Springfield NAACP and of the Harambee Holiday Committee.

Commissioner Hurst manages the MCAD's Springfield office, and has responsibility for the western Massachusetts activities of the Commission.

Statewide Advisory Board

According to Massachusetts General Laws, Chapter 6, Section 6, "The Governor shall appoint an Advisory Board to the Commission, consisting of not less than twenty-one persons, who shall serve at his pleasure. ... The Board shall advise the Commission and the Governor on matters of policy affecting the Commission, and shall review the implementation of the Commission's programs and policies and from time to time report their conclusions to the Commission and the Governor."

Advisory Board Members:

- | | |
|-------------------------------|--------------------------------|
| • Marjorie Perry,
Co-Chair | • Tom Saltonstall,
Co-Chair |
| • Naomi Adelberg | • Harold Langford |
| • John Adkins | • Patricia Lomans |
| • Benjamin Fierro | • Alexander Macmillan |
| • Linda Giles | • Eve Moss |
| • Lynn Gorton | • Haydee Nazario |
| • Shirley Gomes | • Nam Van Pham |
| • Lawrence Hogan | • Kimball Pino |
| • Sherman Josephson | • Prema Popat |
| • John Kelly | • Glendora Putnam |
| • David LaFontaine | • Herman Wheeler |

FISCAL YEAR 1992

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Governor William Weld
Lieutenant Governor Paul Cellucci
Members of the General Court
Citizens of the Commonwealth,

In accordance with the Massachusetts General Laws, Chapter 151(B), Section 3, I am pleased to present to you the annual report for the Massachusetts Commission Against Discrimination.

Fiscal Year 1992 was one of change and innovation for the Commission. Governor Weld appointed two new Commissioners to the MCAD—Naomi Martell in August, and Georgia Thomas Parks in January—giving the three member Commission a completely new composition. The Governor demonstrated his strong commitment to civil rights through his recommendation of an increase in funding for the Commission for the next fiscal year, despite the difficult fiscal conditions that prevail in state government. This will be the first such increase for the Commission in five years.

The Governor's Budget Recommendations also contained "Output Goals" against which the Commission's performance was to be measured. I am proud to report that for each of the three Output Goals for Fiscal Year '92, the Commission has exceeded the benchmarks set by the Governor. The number of cases the Commission resolved during the last fiscal year is unmatched in the Commission's 46 year history, with a staff size that is at a twenty-year low. The backlog has been reduced by close to 10% of what it was a year ago, and individual cases are being resolved more rapidly than before.

While it is true that past cuts in funding contributed to the gridlock that beset the agency in the late 1980s, the chief cause of the MCAD's problems was not a lack of resources. Indeed, a *Lawyer's Weekly* editorial in 1985 called for the Commission to be abolished for "prov[ing] to be an abysmal failure" at a time when the Commission's

staff and resources were at an all-time high. It was poor management, outdated administrative procedures, and a failure to innovate that drove the agency's case load close to seven thousand and caused Complainants and Respondents alike to despair of ever getting their cases resolved.

To meet the challenge of investigating and resolving the 3,600 cases that are annually filed at the Commission with a staff of 37 people, we have been guided by an entrepreneurial approach to public management. Some of the ways the Commission does business are vestiges of the overhaul the agency underwent in 1977 and others date back to the agency's founding in 1946. Many of these standard operating procedures continue to serve the Commission well, but others are now outdated and no longer viable. In the spirit of entrepreneurial government, the MCAD is tackling the following problems with some innovative solutions.

Problem: Cuts in the MCAD budget made the maintenance of regional offices impossible, and the Commission was forced to close its offices in Worcester and New Bedford last year. This left only Boston and Springfield to serve the citizens of the Commonwealth for the filing and investigation of complaints.

Solution: The Commission has formed working partnerships with municipal civil rights agencies around the Commonwealth to have them take and investigate cases of discrimination in their area. The MCAD has already established a working partnership with the Cambridge Human Rights Commission, is about to sign one with the New Bedford Commission on Human Relations, and is working on an agreement with the city of Worcester.

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MESSAGE FROM THE CHAIRMAN

Problem: Many people come to the MCAD with the mistaken belief that they have a *bona fide* complaint, when in fact their concern is not covered under state law or could be dealt with more appropriately by another state agency. In the past, these cases were being routinely docketed and were needlessly clogging up the case inventory.

Solution: Every person who wishes to file a complaint with the Commission must first meet with a customer service representative who will speak with them privately to determine if they have the basis for a complaint. Over 50% of the people who now come into the MCAD to file a complaint, walk out without having done so because the Commission lacks the jurisdiction to investigate their case.

Problem: The Commission could no longer afford the use of stenographers to create a record of public hearings or for Commission attorneys to conduct depositions. The number of public hearings conducted by the Commission fell to 4 in 1990, and Commission-conducted depositions became non-existent.

Solution: The MCAD adopted new regulations that allow for hearings and depositions to be recorded electronically on cassette tapes. In Fiscal Year 1992, the MCAD conducted over 40 hearings and for the first time in years, Commission counsel have held depositions in cases they were preparing for hearing.

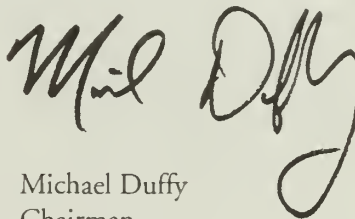
Problem: Public Accommodations cases were languishing without any attention from investigators because employment and housing cases were (rightly so) given higher priority. After the passage of time, public accommodations cases were becoming almost impossible to investigate.

Solution: Fact-finding conferences on the backlogged public accommodations cases have been convened for Saturdays.

Both the Complainant and the Respondent are present to give their side of the story to the Investigating Commissioner who then makes a case determination on the spot. Through this process, the backlog of public accommodations cases that stretched back to 1984 has been eliminated.

Much work remains to be done, but we have created a problem-solving spirit within the agency that will ultimately result in the elimination of the agency's backlog. We have changed the rules of the game so that we no longer see Complainants and Respondents as our antagonists, but rather as our customers.

As Chairman, I am constantly evaluating and re-evaluating the way the Commission does business, with an eye toward greater efficiency and increased effectiveness. We need to re-think not our mission but our methodology, for ultimately the MCAD must innovate and adapt if it is to remain a viable civil rights enforcement agency.



Michael Duffy
Chairman
July 1992

An individual who wishes to file a complaint should contact the nearest MCAD office to meet with an investigator and give a summary of the specific acts of alleged unlawful discrimination, including: the dates on which the alleged discriminatory acts occurred; a list of the names, titles, business addresses, and telephone numbers of persons charged with committing unlawful discrimination; names of witnesses, if any; any supporting documentation, such as memos, notices, leases, and comparative data; details of any financial and or emotional losses suffered as a result of the alleged unlawful discrimination.

If the complaint falls within the Commission's jurisdiction, the investigator drafts a formal complaint based on this information provided by the Complainant. The complaint is then mailed to the Respondent (individual or organization) charged with committing the discriminatory act, who is asked to respond to the allegations.

Investigation

Depending upon the Respondent's answer to the complaint, the investigator may advise whether there is a reasonable basis for settlement. A Settlement Conference may then be convened with both the Complainant and the Respondent. Many cases are closed in this way.

If the case is not settled at this stage, the investigator begins further investigation using various means, including interrogatories and document requests. The investigator may convene a Fact-Finding Conference at which the Complainant and Respondent and appropriate witnesses are present.

Probable Cause Determination

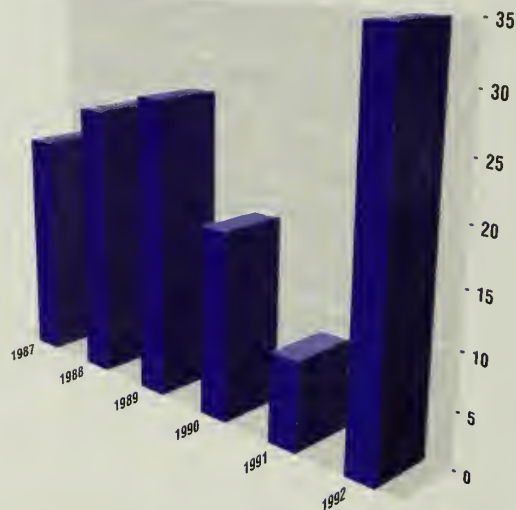
Depending upon the information obtained during the investigative process, the Investigating Commissioner makes a finding of either Probable Cause or Lack of Probable Cause.

If Probable Cause is found, the Complainant and the Respondent may elect an administrative public hearing or a judicial determination of the case in state court. If neither party elects to go to state court, the Complainant can retain either private counsel or be represented by one of the Commission's staff attorneys in further attempts at conciliation.

If a Lack of Probable Cause determination is made, the Complainant may appeal the finding by filing a request with the Commission within ten days of the initial determination.

Public Hearing

If further attempts at conciliation fail, the Commission convenes a Public Hearing at which one of the three Commissioners presides. The Complainant and the Respondent, or their representatives, present their cases at the hearing. Then the presiding Commissioner enters an order based on the facts presented at the hearing. Both the Complainant and the Respondent have the right to appeal the decision to the full Commission and then to Superior Court on the basis of the record established at the Commission proceedings.



Public Hearings

Few things are more important in carrying out the mission of the MCAD than conducting Public Hearings. In recent years, the number of hearings conducted had fallen dramatically. In 1992, the Commission made a concerted effort to reverse this trend and held close to 40 hearings in FY 1992. During the coming fiscal year, the Commission's goal is to conduct more public hearings than all those that were conducted in the five years from 1987 to 1991. The credible threat of a Public Hearing continues to be critical to upholding the promise of the Commonwealth's civil rights laws.

Whenver possible, the Commission attempts to voluntarily settle complaints of discrimination that have been filed at the MCAD. In fact, in some instances, statutory law requires that the Commission attempt to settle a case.

Settlement is a negotiating process whereby both parties involved in a case are able to agree to a mutually beneficial resolution of the complaint of discrimination. In some instances, settlement is not appropriate. Frivolous complaints that have no basis should be dismissed for lack of probable cause and egregious cases of discrimination should be prosecuted to the fullest extent and sent to a public hearing. However, in many cases, settlement may be advantageous for all parties concerned.

With some complaints settlement may lead to the Complainant getting their old job back; it may involve the employer writing a neutral letter of reference; sometimes, it will result in the Complainant receiving a cash payment. In all cases it means that the person who filed the complaint with the MCAD will withdraw it in exchange for something in return from the Respondent. The result is that the case takes less time to resolve than if it had gone to a public hearing, and both sides spend less on legal fees.

We have identified three critical opportunities for settlement in the life of a case at the MCAD. Of course, settlement can occur at any time, but after careful observation, these three junctures present the best opportunity for fruitful negotiation.

Case Intake

One of the best times to attempt voluntary resolution of a complaint is right after the case is filed. At this stage of an investigation, back pay damages are usually small and both sides have not dug into their positions. Within 45 days of case intake, MCAD investigators bring both the Complainant and Respondent together and conduct a Fact-finding Conference at the offices of the Commission. In addition to gathering information relevant to a complaint, investigators are required to use this as a forum for settling the case. Just over 10% of all the cases that are resolved at the MCAD are resolved at this stage.

The Commission is focusing on improving this settlement rate by training the investigative staff, and helping them to improve their negotiating skills. Last fall, all of the Commission's investigators participated in a day long training session on negotiating, and each was presented with a copy of Roger Fisher's *Getting to Yes*. In addition,

the investigator who was able to negotiate the most settlements this year was rewarded with a round trip to the national conference of civil rights workers in Nashville, Tennessee.

After Determination

Once a Commissioner has made a probable cause finding in a case, he or she will convene a Conciliation Conference of the Complainant and the Respondent at the Commission. Settlement is likely at this point because both sides are represented by counsel, and attorneys are usually helpful in pointing out to their clients the benefits of settling a complaint voluntarily. Also, once a probable cause finding is issued, Respondents take cases much more seriously and engage in good faith negotiating. The Commission's revised rules of procedure now provide that within 6-8 weeks of issuing a probable cause determination, a Commissioner will automatically schedule one of these conferences.

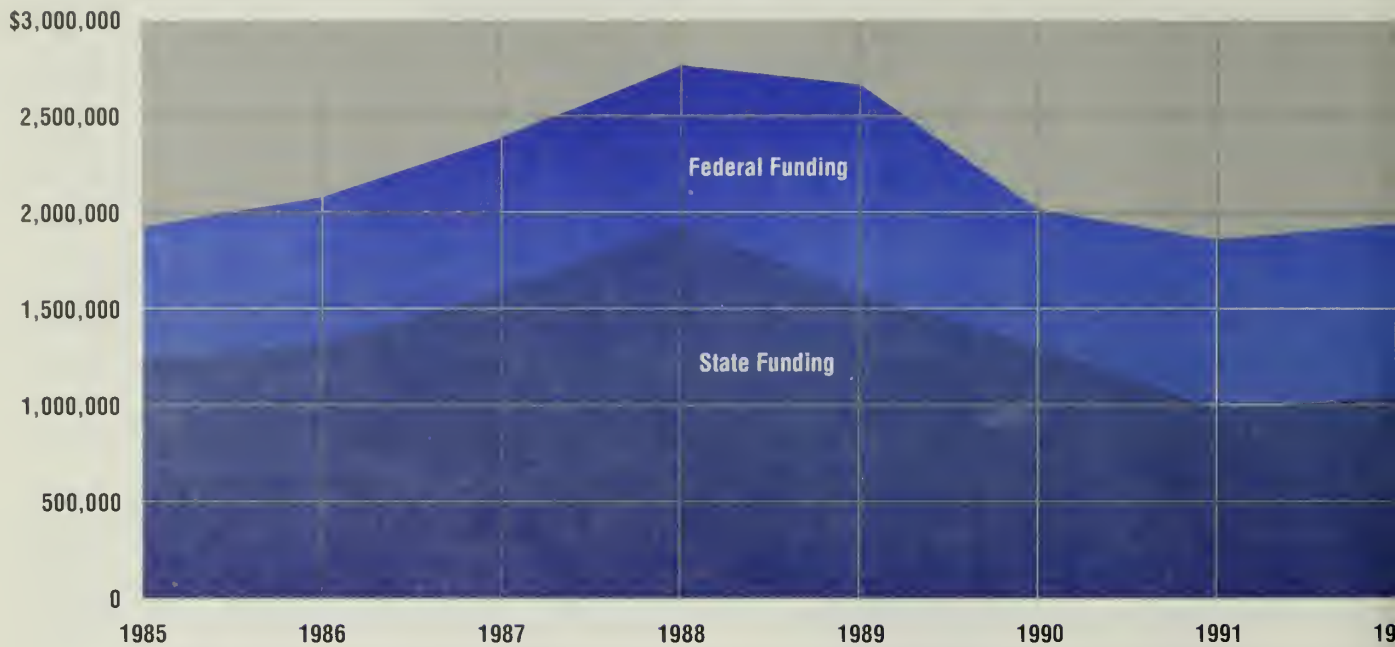
Roughly one third of all cases in which probable cause is found will be successfully conciliated at this stage of the process. In cases where a negotiated compromise is not possible, the Investigating Commissioner will certify the case for public hearing.

Before Public Hearing

After a 6-month period for discovery, both parties are brought together one final time prior to public hearing. This Pre-Hearing Conference is held to organize the evidence in preparation for hearing and also to provide the parties with one last formal opportunity for settlement.

The likelihood of settlement at this stage is increased by the fact that, after discovery, both Complainant and Respondent are aware of the relative strengths and weaknesses of their respective cases. Rather than risk the possibility of losing completely at a public hearing (and facing the certainty of legal fees that can easily exceed \$20,000) one side or the other may soften previously held negotiating positions. Lawyers often call this phenomenon "settling on the Court House steps."

At this stage in the life of a case, another third of all cases in which probable cause has been found will successfully settle. Because so much time has passed before a case gets to this point, back pay damages have increased, and cases settled at this point usually involve settlement amounts ranging from \$50,000 to \$100,000. The remaining third of the cases that have not settled by this time will go on to a public hearing.

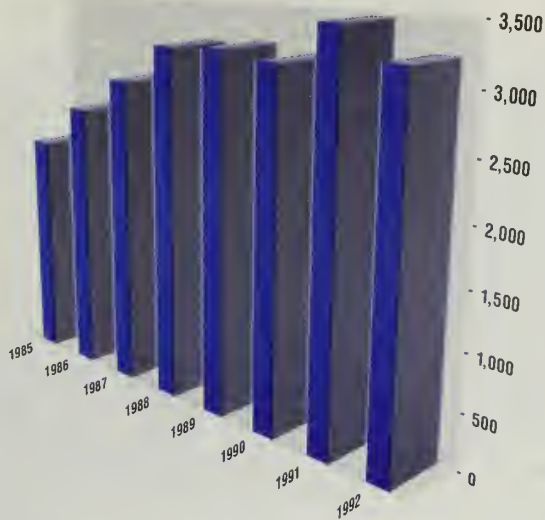


In 1982, the Commonwealth of Massachusetts funded the MCAD in the amount of \$ 1,005,005. In 1992, state funding had risen to \$1,052,824, an increase of only \$47,819. During this same period, the number of complaints filed at the Commission has increased more than 50 percent. This underfunding of the Commission has posed great challenges.

One of the ways the MCAD has responded to this challenge has been to seek funds from the federal government. These funds come from the Federal Department of Housing and Urban Development (HUD) and the Equal Employment Opportunity Commission (EEOC), and are predicated on the number of investigations and case closures the MCAD achieves each year. In spite of the number of complaints under investigation and case closures in the

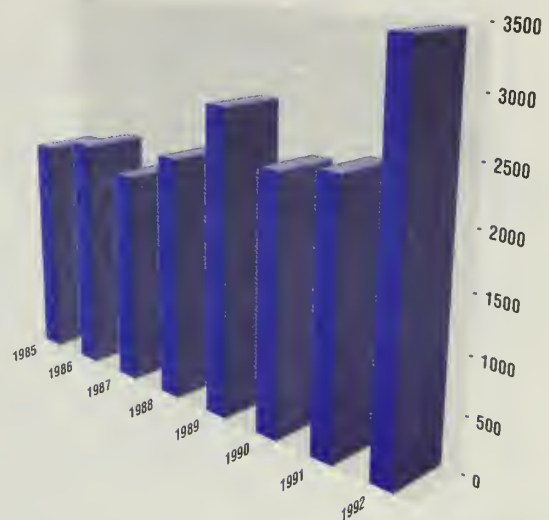
past year, federal funding is lower than it was a decade ago. In 1982, it was \$989,463. In 1992, the MCAD received federal funding only in the amount of \$886,300

Thus, the Commission has had to turn to private resources, both financial and in-kind, to supplement these appropriations. It has applied for grants from private foundations, such as the Ford Foundation. It has recruited volunteers to assist with the backlog created by the reduction in staff. This summer, 80 interns have been assisting in the investigation and closure of backlogged cases. Volunteers across the state are being trained to take complaints at locations outside the MCAD offices, and the Commission has asked that members of the legal community volunteer to represent Complainants whose cases are going to Public Hearing.



Cases Filed

As the result of screening cases to make sure the MCAD had jurisdiction before a case was docketed, the number of cases filed this year declined slightly. Last year, there were 3,456 cases filed; this year, 3211.



Cases Resolved

An all time record number of complaints was resolved by the MCAD in FY 1992. The 3,440 complaints resolved is one third higher than the number of cases resolved last year.

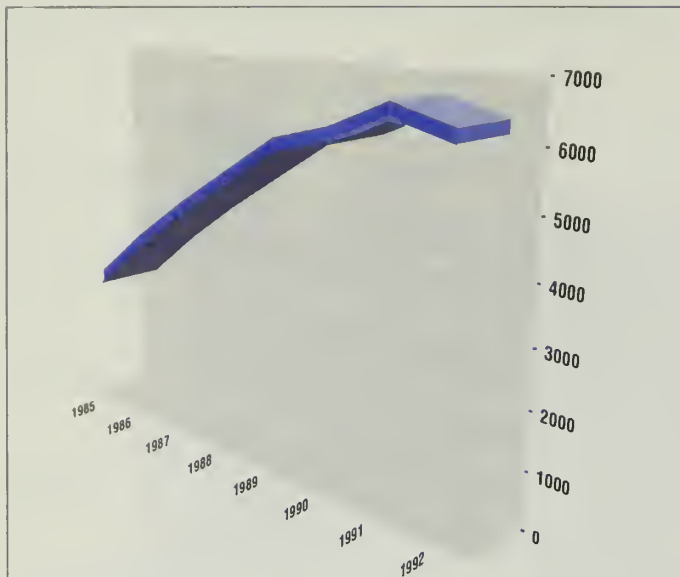
Massachusetts Commission Against Discrimination Fiscal Year 1992 Budget

Funding

State Administration	\$1,052,824
State Retained Revenue	0
State Welfare Contract	0
<i>Subtotal State Funding</i>	<i>1,052,824</i>
Federal HUD Title V111	136,000
Federal HUD FHIP Grant I	0
Federal HUD FHIP Grant 11	72,300
Federal Equal Employment Contract	678,000
<i>Subtotal Federal Funding</i>	<i>886,300</i>
Total Commission Funding	\$1,939,124

Expenses

Personnel	\$1,325,669
Contract Personnel	178,000
Other Personnel Cost	180,204
Office Rent	24,000
Telephone	47,251
Equipment Maintenance	40,000
Office Supplies	114,000
Travel	6,000
Postage	24,000
Total Expenses	\$1,939,124



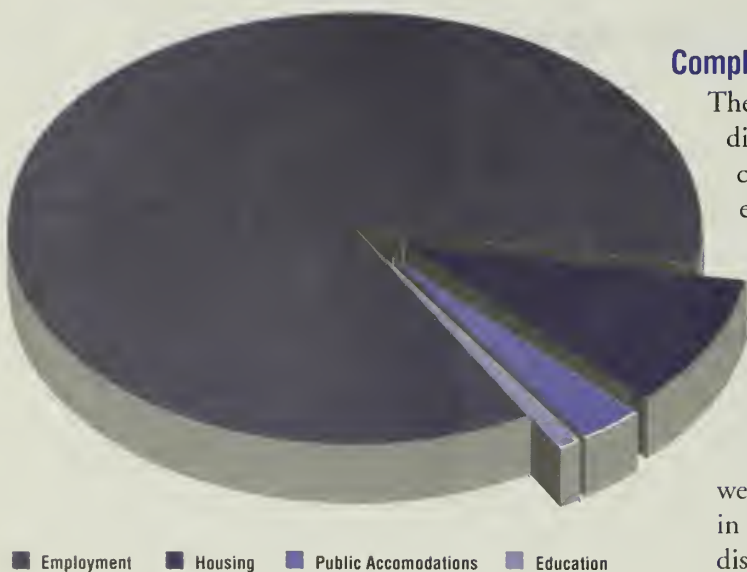
Case Inventory

The number of open cases at the Commission reached a record 6500 during FY 1991. The backlog was the predictable result of several years of a general increase in the number of filings and the decrease in staff and resources. However, because of the Commission's increased efficiency in resolving cases, the case inventory dropped for the first time in over a decade.



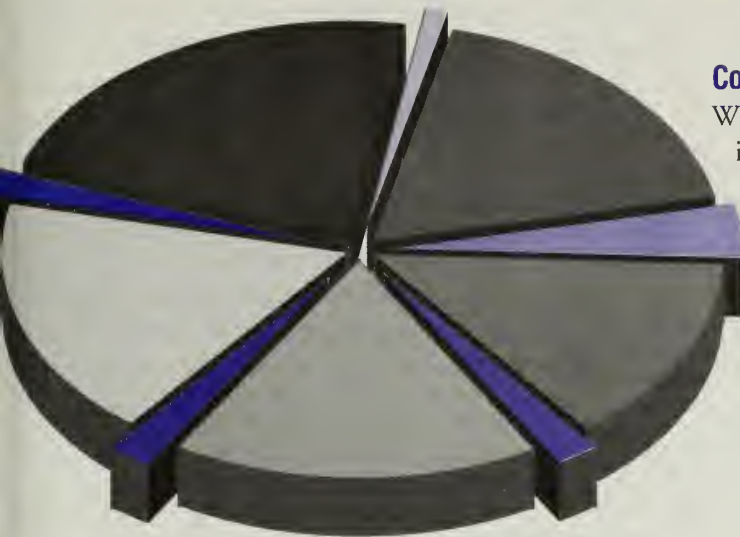
Monetary Awards

During the last fiscal year, the Commission began to re-emphasize voluntary settlement as an alternative to having a case formally work its way through the Commission. The result is a "win-win" situation for Complainants and Respondents alike. As a result of voluntary settlements in FY 1992, the Commission was able to secure over \$750,000 in settlement payments to Complainants—over twice as much as the year before.



Complaint by Type

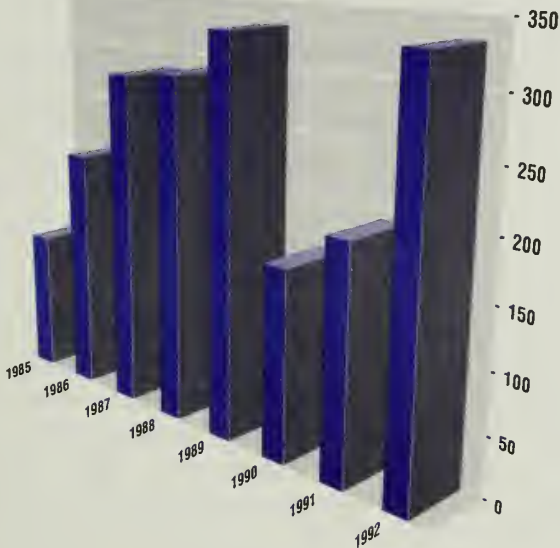
The number of complaints filed at the MCAD varies directly with the ups and downs in the business cycle. As the economy in Massachusetts has worsened, rising unemployment, increases in the amount of time it takes to find employment, and a sluggish housing market have affected the types of cases being filed at the MCAD. With every new round of layoffs, the MCAD receives a spate of claims of employment discrimination. Employment cases now constitute 86% of the claims filed. Conversely, the weak housing market seems to have resulted in a decline in the number of housing discrimination complaints.



Complaints by Protected Class

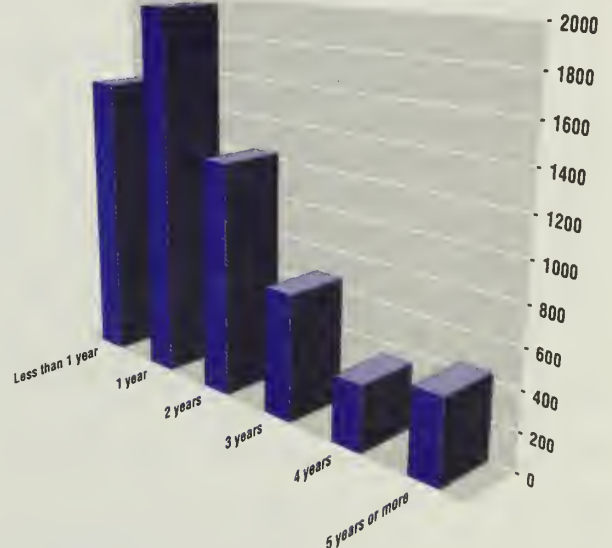
While there has been a trend in recent years toward an increase in age and disability discrimination complaints, this year the percent of all the protected classes filing complaints generally has stabilized. There has been, however, some increase in the filing of sexual orientation and sexual harassment complaints. This increase in the latter may be due to recent media attention on the issue of sexual harassment during the Clarence Thomas hearings.

■ Sex 21% ■ National Origin 14% ■ Race 21% ■ Children 2% ■ Welfare 4%
 ■ Age 16% ■ Disability 16% ■ Sexual Orientation 2% ■ Religion 2% ■ Marital Status 1%



Probable Cause Findings

The number of complaints where probable cause has been found has risen dramatically over the last decade. During the last year it has doubled. This indicates that not only are more cases being closed, but more people are being served.



Case Backlog

The Commission's "backlog" of cases has been defined as all of those cases that have been pending at the MCAD for four years or longer. Eliminating this case backlog is the agency's highest priority, and a concerted effort is now underway to resolve the Commission's oldest cases. In September 1991, the Commission created a Special Investigative Unit charged with the task of resolving these cases. By the end of this fiscal year, the Commission is striving to resolve any case older than four years.

Six years before the Civil War in 1855, the Commonwealth of Massachusetts enacted laws forbidding discrimination in public education and public accommodations. It was one of the first states to do so. Regardless of such laws, discrimination in the workplace was legal and commonly practiced in the state at the time.

It was not until the creation of the Fair Employment Practices Commission in 1946 that the Commonwealth attempted to address this problem. The primary purpose of the agency was to enforce civil rights legislation. The Commission's name was changed to the Massachusetts Commission Against Discrimination (MCAD) in 1950. During the 1960's and the 1970s the MCAD grew substantially. It assumed increasing responsibility because of jurisdictional changes in new state and federal laws. The four part-time Commissioners became three full-time Commissioners. The MCAD's budget and staff increased steadily until the mid 1980's, when budget restrictions forced cutbacks. In spite of the cutbacks, the MCAD's workload has continued to expand.

The MCAD's goal is full compliance with civil rights laws and regulations. The Commission has the power to investigate and decide cases of discrimination in the areas of employment, housing, public accommodation, credit, services, and education. In addition to handling complaints, the Commission promulgates rules and regulations; monitors and assists businesses and government in their efforts to comply with civil rights laws; sponsors educational programs for law enforcement officials responsible for civil rights enforcement; and actively promotes broad public understanding of human rights issues.

The MCAD addresses discrimination on the basis of:

- | | |
|-------------------------|--------------------------------|
| ■ race | ■ disability |
| ■ age | ■ ancestry |
| ■ color | ■ receipt of public assistance |
| ■ marital status | ■ sex |
| ■ religious creed | ■ military/veteran status |
| ■ persons with children | ■ sexual orientation |
| ■ national origin | ■ criminal record |

Executive Order 227 charges the MCAD with additional responsibilities, including advising the Governor's Cabinet Officers concerning the policy and practices of the Commonwealth's affirmative action mandates. This advice consists of reviewing the applications of cities and towns for public funds to ensure equality of opportunity for racial and ethnic minorities, women, and people with disabilities. In addition, the Commission is responsible for monitoring the State's contract compliance program which requires recipients of discretionary state funding to implement and enforce programs that guarantee equality of opportunity for minorities and women.

The MCAD carries out its anti-discrimination and affirmative action mandates by:

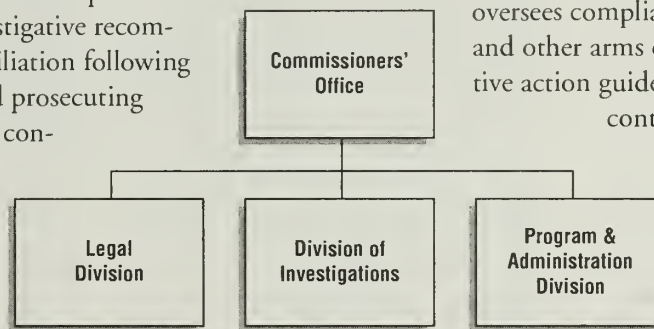
- receiving and processing complaints of discrimination brought by individuals and organizations;
- educating the public through training programs, public speaking engagements, media campaigns and participation in groups supporting human rights;
- reviewing the activities of Massachusetts municipalities in order to assess and encourage compliance with fair practices and to ensure that no public funds are spent in a discriminatory manner or in support of discriminatory practices;
- initiating research activities and legal suits which may advance the rights of Massachusetts citizens.

During the past decade, Massachusetts has continued to lead the nation in the area of civil rights. Under the state's civil rights laws of 1983, persons with disabilities received protection, nearly a full decade before passage of the national Americans with Disabilities Act. When AIDS was classified as a disability, people with AIDS were protected from discrimination under the 1983 law. In 1989, the Commonwealth enacted one of the country's first state wide sexual orientation laws, guaranteeing civil rights protections to lesbians and gay men in housing, employment, public accommodations and credit.

Three Commissioners head the MCAD. They are responsible for setting policy for the MCAD, determining if probable cause exists to believe discrimination has occurred in a case, and hearing cases. Each of the three has primary responsibility for a particular region of the state: one is appointed from the western part of the state and serves in the MCAD's Springfield office; another carries special responsibility for southeastern Massachusetts; the third oversees the administration of the Boston area. Three major divisions come under the supervision of the Commissioners. These are the Legal Division, the Division of Investigations, and the Program and Administration Division.

The Legal Division serves as in-house counsel to the Commission. Duties of the legal staff are varied, and include advising investigators on complex investigations, reviewing investigative recommendations, attempting conciliation following a Probable Cause finding, and prosecuting cases in public hearings when conciliation fails. Commission attorneys also represent the MCAD in court.

The Division of Investigations receives and investigates complaints concerning discrimination in education, employment, private and public housing, credit, and public accommodations. In its investigations, the Division uses fact-finding conferences, interrogatories, personal interviews, and on-site visits to search out information concerning allegations of discrimination. During the investigation stage, the Division may provide an invaluable service to both the complainant and the respondent by allowing them to air their concerns and helping to defuse the situation. Investigators strive to improve conditions and practices in the work place and to help the parties arrive at a mutually satisfactory resolution without having to go to a public hearing.



The Program and Administrative Division is divided into three areas: The Systematic Fair Housing Testing and Enforcement Program, the Civil Rights Review Unit, and the Control Unit.

■ The Systematic Fair Housing Testing and Enforcement Program aims to combat large-scale, institutionalized housing discrimination in Massachusetts through two major program initiatives: 1) a Testing Program, which investigates housing providers in particular geographic areas for compliance with fair housing laws; and 2) an Enforcement Program, which brings housing discrimination complaints against those agencies found to discriminate.

■ The Civil Rights Review Unit is the channel through which grant recipients achieve compliance with prevailing requirements. The Unit has two primary functions: 1) it oversees compliance of municipal governments and other arms of government with state affirmative action guidelines; 2) it monitors the state's contract compliance program, which requires recipients of discretionary state funding to implement and enforce programs that guarantee equality of opportunity for minorities and women.

■ The Control Unit is responsible for the financial and administrative functions of the MCAD. As the planning and monitoring arm of the Commission, the Control Unit provides information and recommendations on management of the agency's case load. The Control Unit develops and manages the Commission's budget, which includes three yearly contracts with the MCAD's federal counterparts, the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD). In addition, the Unit oversees the administrative support functions of the Commission.

Decisions of a Single Commissioner for the Year 1991-92

All decisions from the Commission are published in the *Massachusetts Discrimination Law Reporter* (MDLR). In addition to the MCAD decisions, the MDLR publishes the Supreme Judicial Court decisions involving private parties bringing suit under M.G.L. c.151(B). The MDLR is published monthly by the New England Legal Publishers.

■ **Godino v International Food Services**

Discrimination on the basis of sex and retaliation. Complainant originally alleged that she had been sexually harassed by her employer. She later amended her complaint to include retaliatory discharge when she was terminated from her position with the Respondent after filing her original complaint with the MCAD. Commissioner Alex Rodriguez dismissed the complaint when he found that the alleged harassing conduct of the employer was not offensive to the Complainant and that the Respondent had legitimate, nondiscriminatory, business reasons for dismissing the Complainant from her position in the company.

■ **Poelnitz v Wackenhut Corporation**

Discrimination on the basis of race and color. Complainant, who is black, alleged that the Respondent failed to hire him for the position of Chief Security officer because of his race and color. Commissioner Alex Rodriguez dismissed the complaint when the Respondent articulated the legitimate, nondiscriminatory reason of insufficient information in its decision not to hire the Complainant.

■ **Brooks v City of Boston Penal Department**

Discrimination on the basis of race and color. Complainant, who was a black corrections officer at Deer Island, filed a complaint with the MCAD alleging that he had been discriminated against on the basis of race and color after an incident in which he and a white officer had to subdue two inmates. At the close of Respondent's hearing concerning the incident, the Complainant was reprimanded for using excessive force and was discharged. In contrast, the white officer was commended for his behavior and retained his position. Commissioner Alex Rodriguez found that there was unlawful discrimination on the basis of race and color. He found that Respondent's termination of the Complainant for the articulated reason of his alleged use of excessive force was pretextual and that the hearing regarding the incident with the inmates had been little more than a sham. He ordered that the Respondent reinstate the Complainant, pay

him damages in the amount of \$86,828.92, and significantly, conduct a training program in human relations and the anti-discrimination provisions of Title VII of the Civil Rights Act of 1964 and M.G.L. c.151(B).

■ **Carter v Boston Public Schools**

Discrimination on the basis of handicap. Complainant filed a complaint with the MCAD alleging that she had been discriminated against on the basis of a handicap (epilepsy) when she was terminated from her position as a school lunch monitor with the Respondent. Commissioner Alex Rodriguez found that there was unlawful discrimination based on a handicap and that the Complainant posed no risk of harm to herself and others because of her disability. Further, he found that the Respondent had failed to make reasonable accommodations for the Complainant's disability. The Commissioner awarded damages in the amount of \$26,668 for lost wages, benefits and emotional distress.

■ **Donahue v City of Springfield Parks and Recreation Department**

Discrimination on the basis of handicap. Complainant alleged that the Respondent had denied him a promotion to temporary foreman of an ice rink because of his disability. He wears a prosthesis, his right leg having been amputated to the knee. Commissioner Alex Rodriguez found that there was unlawful discrimination on the basis of handicap in the failure to promote the Complainant and that the Respondent's articulated reasons that Complainant's physical handicap presented a risk of injury to himself were without any basis in fact. The Commissioner ordered the Respondent to pay damages in the amount of \$20,267.96 for back pay and emotional distress.

■ **Freeman v Town of Duxbury Fire Department**

Discrimination on the basis of handicap. Complainant alleged that he had been terminated from his position as a fire fighter with Respondent after he suffered a severe depression, which he claimed was severe enough to

constitute a handicap under M.G.L. c.151(B). Respondent claimed that Complainant suffered no handicap when he was terminated and that he had been unable to provide enough medical assurance that he posed no risk to himself or others. For the first time at the Commission, Commissioner Frederick Hurst found that mental illness could be a handicap and that Complainant had been wrongfully terminated from his job because of psychological difficulties. He found that in reaching its decision, the town of Duxbury had relied upon unfounded medical testimony and ignored other statements which indicated that the Complainant could continue in his job without posing any risk to himself or others. The Commissioner ordered that the Complainant be reinstated to his position as firefighter and awarded damages in the amount of \$189,211.00 for back pay and emotional distress. Respondent appealed the decision to the Full Commission. The Full Commission has remanded the case back to the Single Commissioner.

■ **Chapman et al v Eastern Electronics Supply Company**

Discrimination in housing on the basis of children. Complainant and his family sought to rent housing from the Respondent and were refused. Complainant believed this was because of his two children. Commissioner Michael Duffy found that this refusal to rent constituted unlawful discrimination under M.G.L. c.151(B) because the Respondents' articulated concern for the children's safety was not a legitimate nondiscriminatory reason for the refusal. The Commissioner awarded damages in the amount of \$2500 for emotional distress.

■ **Shea v Shaw**

Discrimination in housing on the basis of children. Complainant sought housing from the Respondent and was refused. She alleged unlawful discrimination because of her teen-aged daughter in the refusal. Commissioner Michael Duffy found that there was no unlawful discrimination here, as the house in question was a two family dwelling unit, one unit of

which was owner-occupied. As such it was exempt from the discrimination provisions of M.G.L. c.151(B) and the MCAD lacked jurisdiction over the case. Accordingly, the Commissioner dismissed the complaint.

■ **Low v Massachusetts Board of Trustees of State Colleges, et al** ✓

Discrimination on the basis of sex. Complainant, a college professor, alleged that her employer, Framingham State College, had discriminated against her because she received less pay than her male colleagues. The United States District Court decided in her favor. However, she complained that she had not been made whole by the court order and reactivated her complaint with the MCAD for an additional award of back pay. Commissioner Michael Duffy found that the Complainant was entitled to back pay for the five years not covered by the court order, because the MCAD was not bound by the same statute of limitations on Equal Pay claims as was the court. Accordingly, the Commissioner ordered that the Complainant receive back pay in the amount of \$22,684.28.

■ **Wheeler v Lorenzo Pitts, Inc.**

Discrimination on the basis of handicap. Complainant alleged that he was fired from his job because of his handicap which he claimed was an addiction to cocaine. Respondent agreed that it had fired Complainant because of his addiction but disputed that the addiction was a handicap. In this case of first impression, Commissioner Michael Duffy agreed with the Respondent and found that the Complainant had failed to establish that he was in any way handicapped within the statute M.G.L. c.151(B). Accordingly, he dismissed the complaint. This decision was consistent with federal law which does not protect the active use of controlled substances as a handicap. In addition, the Commissioner stated that to allow such use as a handicap would send a confusing and contradictory message to the public concerning the use of illegal drugs.

■ **Barrett v Commonwealth of Massachusetts, Department of Mental Health, Fernald School** ✓

Discrimination on the basis of age. Complainant, a 70-year-old woman, alleged that she was denied flex time benefits and harassed in the workplace because of her age. Commissioner Frederick Hurst dismissed the complaint when the Complainant failed to establish a *prima facie* case. The Commissioner

found that she was not treated differently from anyone else regarding flex-time benefits, and that the alleged harassment was directed at Complainant's work performance and not her age.

■ **Glimcher v Boston Health and Swim Club**

Discrimination on the basis of sex. Complainant alleged that she had been discriminated against and sexually harassed by a co-worker after she rejected his advances. Commissioner Frederick Hurst found that there was not enough evidence to show that what were simply interpersonal difficulties in the workplace rose to the level of sexual harassment or discrimination. Accordingly, he dismissed the complaint.

■ **Rideout v Kane's Place**

Discrimination on the basis of sexual harassment. Complainant filed a complaint with the MCAD alleging discrimination on the basis of sexual harassment. Respondent defaulted but Commissioner Frederick Hurst found at the Public Hearing that the Complainant had made a *prima facie* case. He found that the Respondent had created a sexually harassing environment so pervasive that the Complainant had been unlawfully discriminated against. He awarded damages in the amount of \$8,174.00 in lost wages and medical expenses and \$25,000 for emotional distress.

■ **Yetton v Jack Madden Ford Sales**

Discrimination on the basis of age. Complainant, a fifty-one year-old male applied for credit when purchasing a new car and was refused. He alleged that Respondent had discriminated against him on the basis of his age. Commissioner Frederick Hurst found that the Respondent's refusal to extend credit was based on the Complainant's poor credit history and not his age. Accordingly, the Commissioner dismissed the complaint.

■ **Cochran v. Commonwealth of Massachusetts Department of Correction** ✓

Discrimination on the basis of handicap. Complainant who had cerebral palsy was hired by the Respondent to be a corrections officer at Bridgewater State Hospital. He successfully performed his duties for eight months, after which he was terminated. Commissioner Frederick Hurst found that the Respondent had unlawfully discriminated against the Complainant on the basis of handicap when Respondent determined that Complainant was

disqualified under Medical Guidelines from a public safety position. Since the Commission had required that these Guidelines be changed in a previous decision, the Commissioner discounted their un-amended use here. He found that the Complainant posed no risk of injury to himself or others and ordered that he be reinstated as corrections officer at Bridgewater State Hospital. He also awarded damages in the amount of \$138,683.00 in lost pay and \$50,000 for emotional distress.

■ **Monahan v Commonwealth of Massachusetts, Department of Mental Retardation** ✓

Discrimination on the basis of age and retaliation. Complainant filed a complaint with the MCAD alleging that he had been discriminated against because of age by the DMH. In January 1989, he amended his complaint to include the DMR as Respondent. In March 1989, he further amended the complaint to include the charge of retaliation. Probable cause was found concerning the claim of age discrimination against the DMH and the claim of retaliation against the DMR. Complainant settled with the DMH prior to the hearing so the only remaining issue was the charge of retaliation against the DMR. Hearing Officer Shirley Lee dismissed the complaint of retaliation charges since the alleged misconduct, a request that the Complainant postpone vacation time, a letter of reprimand, and a request to verify the use of sick time all occurred before the Respondent was made a party to the complaint.

■ **Grant v Harrison Supply Company**

Discrimination on the basis of race and color. Complainant alleged that he was fired from his job because of his race and color. Commissioner Michael Duffy found that the Complainant was fired after he failed to prevent thefts of company property from occurring at Respondent's place of business and not because of his race or color. Thus, the Commissioner dismissed the complaint.

■ **Bradley v Sciaba Construction Company**

Discrimination on the basis of race and color. Complainant who is black worked as a construction worker for Respondent. After one month, he was laid off. He alleged that he was laid off on the basis of his race and color and that Respondent had hired three white men with the same skills after they had fired him. Commissioner Michael Duffy found that these three white men had already been in

Respondent's employ at another worksite, before Complainant was even hired, and that they possessed skills for the job which the Complainant did not. Since the Complainant failed to establish a *prima facie* case of discrimination, the Commissioner dismissed the complaint.

■ **Steele v Quincy Public Schools**

Discrimination on the basis of sex.

Complainant was laid off from her job as a vocational high school teacher and alleged that the reason for the lay off was sex discrimination. Respondent argued that declining enrollment in Complainant's traditionally female program was the reason for the layoff. Complainant believed that the declining enrollment had been deliberately engineered by the administration. Commissioner Michael Duffy found no evidence to support the Complainant's claims. He found no evidence that Complainant had been treated differently from males who were similarly situated or that the decline in enrollment in the program had been encouraged by the administration. He found that the layoff had occurred as the result of the teacher's contract and sound educational policies. Accordingly, he dismissed the complaint.

■ **Thompson v Pinder**

Discrimination in housing on the basis of a housing subsidy. Complainant sought to have her landlords (Respondents) accept her housing subsidy as payment for rent. The Respondents refused and the Complainant was forced to move out of the apartment before her subsidy certificate expired. Commissioner Michael Duffy found that the Respondents could articulate no legitimate, nondiscriminatory reason for their refusal to accept the certificates and thus found for the Complainant. He ordered that the Respondents pay \$1000 plus interest to the Commonwealth of Massachusetts as a civil penalty.

■ **Ryan v Springfield Housing Authority**

Discrimination on the basis of handicap.

Complainant alleged a physical intolerance to cigarette smoke as a handicap and was dismissed from her job eleven days after she was hired. She claimed that her employer had failed to make reasonable accommodations for

her handicap and that she was fired because of her handicap. Since the Complainant could not prove that her intolerance for cigarette smoke was a handicap within the statute M.G.L. c.151(B) Section 1(16), she failed to establish a *prima facie* case of discrimination. Accordingly, Commissioner Michael Duffy dismissed the complaint.

■ **Conlon v James River Curtis Paper Company, Inc.**

Discrimination on the basis of handicap.

Complainant claimed an addiction to marijuana as a handicap and that he was wrongfully terminated from his job on the basis of that handicap. He claimed that the Respondent employer had not made reasonable accommodations to his handicap when it failed to monitor his participation in counselling and subsequently fired him when he failed to pass a second drug test. Relying on the precedent in *Wheeler v Lorenzo Pitts, Inc.*, decided earlier in the year, Commissioner Michael Duffy ruled that the Complainant's addiction to an illegal drug was not a protected activity under the Civil Rights Laws. Accordingly, he granted Respondent's motion to dismiss.

■ **Carlton v Worcester School Department et al**

Discrimination on the basis of race and color.

Complainant alleged that she had been harassed and denied a leave of absence from her job as a clerk and stenographer with Respondent employer on the basis of her race and color. Respondent claimed that leaves of absence were almost always routinely denied. Commissioner Michael Duffy found that this was so and that the Complainant could not establish a *prima facie* case of harassment and discrimination on the basis of race and color. There was no evidence that she was ever harassed and she could not prove that she was treated differently from similarly situated non-minority employees. Accordingly, the Commissioner dismissed the complaint.

■ **Eldred v Consolidated Freightways, Inc**

Discrimination on the basis of retaliation.

Complainant filed a claim with the Equal Employment Opportunity Commission against the Respondent employer on the basis

that she was paid less than her similarly situated male colleagues. Seven years after she filed the complaint, she was laid off during a company wide reduction of the work force.

Complainant then filed a complaint with the MCAD stating that the lay off was retaliation for the earlier filing. Commissioner Michael Duffy found that the Complainant failed to establish a *prima facie* case of retaliation and that one could not infer from the length of time between the filing of the complaint at the EEOC and the intervening events that the lay off was retaliation for the EEOC filing. Thus, the Commissioner dismissed the complaint.

■ **Ntapolis v Halem & Schrader, P.C.**

Discrimination on the basis of sex.

Complainant, a 10 % part owner and practitioner in a dental practice alleged unlawful discrimination on the basis of sex when her employers encouraged her to remain single, not to get married, and not to have children. In addition, she alleged that she was barred from having an outside practice while another male employee practitioner was permitted to have a practice of his own. Commissioner Michael Duffy found that the Complainant could not prove that the Respondent had a bias in favor of single employees. Further, he found that Complainant could not establish a case of disparate treatment relative to the male employee, as he already had a dental practice before he entered the employ of the Respondent and thus was not similarly situated to the Complainant. Accordingly, the Commissioner dismissed the complaint.

■ **Clark v O'Connor**

Discrimination in housing on the basis of a housing subsidy. Complainant charged that Respondent refused to rent an apartment to her on the basis of her source of income, that is, a Section 8 housing subsidy. Commissioner Michael Duffy found that the assertion of the Respondent that she did not want to rent to Complainant because the unit in question would not pass inspection was not sufficient to rebut the Complainant's *prima facie* case of discrimination. Thus, the Commissioner found in favor of the Complainant and awarded her \$1500 in emotional distress damages.

Cases Settled

There were 28 cases settled during the year 1991-1992 after being certified to a Public Hearing. Summaries of 18 of these cases follow.

■ Martin v DeAngelo's Sub Shop

Discrimination on the basis of handicap. Complainant who worked at Respondent employer from August 1984 until May 1985 as a part time food service handler is a diabetic. She was told in May 1985 that her job was terminated because the manager was afraid that she would be unable to handle the work when summer came. She believed this discharge was because of her illness. The Respondent contended that it was because of her work performance. The case was settled for \$500.

■ Millet v Digital

Discrimination on the basis of handicap. Complainant contracted hepatitis B while working for the Respondent. He took a sick leave and when he returned to work, he was unable to perform the functions of his job. Respondent then encouraged him to find a new position within the company. He did so but took a number of sick days. The Respondent warned him in writing that if he took three consecutive unauthorized sick days, he would be fired. He took more sick days and was discharged. Complainant at first alleged that Respondent failed to accommodate his handicap. When there was no finding of probable cause in that action, he amended his complaint to add a claim of wrongful termination on the basis of handicap. The case was settled for an undisclosed amount.

■ Haddocks v Office of Job Partnership

Discrimination on the basis of race and color. Complainant was the only black who held an executive position in the Respondent company. He was the only black terminated from his position when the company began a work force reduction. The company told him that he could have another job, but since in that job, he would have to move his office and be under the supervision of previous subordinates, Complainant left, claiming constructive discharge. The case was settled for an undisclosed amount.

■ Knox v AT & T

Discrimination on the basis of handicap. Complainant suffered from an impaired sciatic nerve condition and told the Respondent employer that she could not do any heavy lifting or climbing of ladders on the job. The Respondent made no accommodations for the Complainant, and as a result she suffered an injury in 1984 which disabled her from performing her job duties. She claimed discrimination on the basis of her handicap. The Respondent claimed that she was not a qualified handicapped person as she was unable to do her job after the accident. The case was settled for an undisclosed amount.

■ Duarte v Nanco Trailer Leasing Company

Discrimination on the basis of race and color. Complainant who is black held a probationary position as a truck driver with employer Respondent. He was terminated from his position with the company when it was alleged that he was stealing company time on his truck runs. Complainant alleged that since there were white co-workers with more warnings than he concerning time stealing, that he had been terminated because of his race and color. Respondent contended that Complainant was the only worker whose infractions had been witnessed. The case was settled for \$1500.

■ Arango v Custom Deliveries

Discrimination on the basis of race and color. Complainant was the only black truck driver at the Natick terminal of Respondent employer. He alleged that during his employment there, he was treated differently from other employees similarly situated. He received numerous reprimands for procedural violations which he alleged were pretextual for discrimination based on his race and color. Respondent argued that the reprimands were real. The case was settled for an undisclosed amount.

■ Champagne v Mt. Greylock Regional School District

Discrimination on the basis of age. Complainant who was 68 at the time of the complaint claimed that she was denied a position as a high school teacher or teaching assistant on the basis of her age. Respondent argued that they hired individuals for the positions whom they deemed were better qualified than the Complainant. Originally, there was a Lack of Probable Cause finding in the case. This was changed to a Probable Cause finding

when additional facts became evident. The case was settled for \$10,000.

■ Silverman v Wright Line, Inc.

Discrimination on the basis of age and handicap. Complainant worked for Respondent employer for seventeen years as a salesman when he received a poor evaluation. A year later at the age of 53, he had a heart attack. Five months later when he returned to work, he was told either to take a smaller territory or to quit. Two days after he chose the smaller territory, he was discharged. He claimed the discharge was because of his age and illness; Respondent argued that it was due to poor job performance. The case was settled for an undisclosed amount.

■ Fox v Lindsay

Discrimination in housing on the basis of sex, children, and a housing subsidy. Complainant who had three children under the age of six and was a 707 rental subsidy recipient was refused housing by the Respondent when it was discovered that the unit in question contained lead paint. Respondent refused to make the repairs required by law and Complainant filed a complaint with the MCAD alleging that she had been discriminated against on the basis of her sex, her children and her rental subsidy. There was an issue about whether or not there was a signed lease concerning the rental property. The case was settled for \$1900.

■ Acevedo v Halton, M.D.

Discrimination on the basis of being a recipient of public assistance (medicaid). Complainant who had suffered eye problems from childhood had been seeing an eye doctor for treatment. When he no longer accepted medicaid payments, she began to pay him cash but she could not see him as often as necessary. She made an appointment with Respondent who refused to treat her unless she paid cash. She was unable to do so. By the time she was able to see a doctor after this refusal, she had lost the vision in her left eye. The Respondent argued that he insisted upon cash payment to discourage the Complainant from choosing him as a physician of second choice whom she did not know, in preference to the physician to whom she was paying cash with whom she was satisfied. The case was settled for \$3000.

■ **Hennessey v Stratford, Winchester Management Companies**

Discrimination in housing on the basis of children. Complainant called Respondent to ask about renting an apartment. He asked if she had a child. When she responded that she had a four year old child, Respondent said that because of the presence of lead paint in the apartment, it was his policy not to rent to people with children under six. Respondent was unwilling to de-lead the place. As a result of this refusal, Complainant had to live in a shelter from August until October when she found suitable housing. The case was settled for \$500.

■ **Delorme v Star Containers**

Discrimination on the basis of sex. Complainant was a female factory worker for Respondent for two years after which she was suspended and eventually terminated. She alleged that the discharge occurred because of rumors that she was having an affair with her male supervisor. He retained his job. The Respondent argued that she was suspended for failure to perform her duties adequately and then after returning to work, that she left the job voluntarily for a better position. Originally, there was a Lack of Probable Cause finding. This was later changed to Probable Cause. The case was settled for an undisclosed amount.

■ **Haley v Strathmore Paper Company**

Discrimination on the basis of handicap. Complainant suffered from a lower back problem which required an operation. After being out of work recovering for 20 months, he claimed that the Respondent employer failed to rehire him because of his handicap. Respondent argued that they did not rehire Complainant because he refused to obtain medical confirmation of his ability to perform the job. The case was settled for an undisclosed amount.

■ **Washington/Brown v Steeve**

Discrimination in housing on the basis of race and color. Complainants alleged that the Respondent refused to rent to them on the basis that they were an inter-racial couple. Respondent argued that the couple's income was insufficient to pay the rent required. The case was settled for \$2400.

■ **Kohse v Springfield Industrial Center**

Discrimination on the basis of physical impairment. Complainant alleged that he was not hired by Respondent as a boiler room

attendant because of his physical impairment: a facial birthmark. He alleged that the Respondent made humiliating remarks about the impairment after the job interview. Respondent argued that Complainant was not qualified for the job because he did not possess a fireman's license which was a job requirement. The case was settled for an undisclosed amount.

■ **Scholastico v Siegel et al**

Discrimination in housing on the basis of a housing subsidy. Complainant who was the mother of an infant son was interested in renting an apartment owned by Respondent. When she said that she would use Section 8 housing subsidy to pay the rent, Respondent refused to accept this on the grounds that such a payment was too involved. After this rejection, Complainant had to stay in a shelter, where she became so concerned for the welfare of her child, that she suffered from anxiety attacks. The case was settled for \$1,100.

■ **Owens v Massachusetts Bay Transportation Authority**

Discrimination on the basis of race and color and retaliation. Complainant, a black man, had been a bus driver for the Respondent employer since 1984. In 1987, he was arrested due to a warrant for a traffic violation and suspended from his job. He alleged that white bus drivers arrested or convicted for traffic violations were not treated the same way. In addition, one day before he was arrested and suspended, Complainant alleged that the Respondent found out that he was going to participate in a discrimination suit filed at the MCAD against Respondent by a co-worker. The case was settled for an undisclosed amount.

■ **Pacheco v Pires**

Discrimination in housing on the basis of marital status. Complainant was a tenant of the Respondent from 1982-1989. When she separated from her husband and requested that the rental receipts be made out in her name because she was a recipient of AFDC, she alleged that the Respondent landlord told her that she would have to move or bring her husband back. Respondent argued that Complainant was chronically behind in paying the rent and that her children had damaged the apartment. The case was settled for the amount of \$100 and forgiveness of a debt of \$620.50 which Complainant owed Respondent.

Court decisions in which the MCAD was a party in the year 1991-1992.

■ **Francis v MCAD**

In the decision by the single Commissioner, affirmed by the Full Commission, Commissioner Frederick A. Hurst found that the plaintiff here, Respondent below had discriminated against the Complainant Mary Lindenberg by denying her the opportunity to rent property on the basis that she received section 8 housing subsidy. The Commissioner awarded the Complainant \$2000 in damages. When the Respondent/plaintiff appealed the decision, the Superior Court entered a judgment for the MCAD by agreement.

■ **Art Cement Products Co., Inc. v MCAD and another**

The Superior Court upheld the findings of the Full Commission that the plaintiff here, Respondent below had discriminated against Lila Brady on the basis of sex. When the company had terminated Ms. Brady because she had breast cancer and was to undergo a mastectomy, they had done so out of the belief that such an operation would render her unstable, and contenting that the same decision might have been made with a man similarly situated. The Court upheld the judicial notice which the Commission had taken that in our society women's breasts are more significant socially and culturally than those of men. Thus the court found the termination of Ms. Brady was illegal discrimination. The Court further upheld the award of damages for emotional distress. Since the plaintiff is currently bankrupt, collection of the damage award will be difficult.

■ **City of Lowell v MCAD**

The Superior Court affirmed the full Commissions findings that when the plaintiff here, Respondent below had told the Complainant that she would not be considered for the position of assistant city clerk because of her gender, that they had discriminated against the Complainant on the basis of sex. The Court upheld the award of damages for back pay and remanded back to the Commission for consideration the damages awarded for emotional distress. The plaintiff waived this rehearing and paid the Complainant the sum of \$92,033.16.

■ **Kontsas v MCAD**

The Superior Court granted the MCAD summary judgment in a case where from beginning to end the plaintiff here, Respondent below attempted to ignore the procedural requirements of the Commission. After the single Commissioner had found that the plaintiff had discriminated against the Complainants on the basis of race, the plaintiff had first attempted to bypass the requirement that an appeal must go to the full Commission. When he had filed a late appeal, the Commission had denied him a hearing. The Court found that this denial was no abuse of the Commission's discretion in that all of plaintiff's actions relative to the Commission had been the result of intentional behavior and not excusable neglect. In granting the MCAD summary judgment here, the Superior Court upheld the integrity of the administrative process.

■ **City of Chelsea v MCAD and Daniel G. Carranza**

The Superior Court affirmed the decision of the Commission that plaintiff here, Respondent below had discriminated against the Complainant Mr. Carranza on the basis of national origin when it terminated his position. The Court upheld the award of \$56,461.50 in damages. These included \$11,000 which the Complainant had expended in taking out a mortgage so that he could pay for living expenses after he was terminated.

■ **Jay Lennad Furs v Saluta and the MCAD**

The Superior Court affirmed the decision of the Full Commission to award damages in back pay, vacation pay, and emotional distress when it found that the plaintiff here, Respondent below had fired the Complainant in retaliation for a claim of age discrimination he had filed with the MCAD. Complainant was 77 years old at the time of the claim. While there had been no finding of probable cause on the issue of age discrimination, when the plaintiff fired the Complainant unless he dismissed the charge, the Commission found and the Court affirmed that this was retaliation.

■ **Ramsdell v Western Massachusetts Bus Lines et al and MCAD**

The Superior Court affirmed the decision of the Full Commission dismissing the complaint of sex harassment, failure to promote, and unequal pay. The Court agreed with the Commission that while other women might have found Respondent's behavior intimidating, insulting, degrading and offensive, the plaintiff did not and had even to an extent provoked the behavior. Relative to plaintiff's claim of failure to promote, the Court agreed with the Commission that when Respondent had chosen a man instead of plaintiff for a position, the man was better qualified. Last, in relation to the complaint of unequal pay, the Court affirmed the Commission's finding that the male with whom the plaintiff compared herself had more experience, years in the business, skill and a stronger customer base.

■ **Lariviere v MCAD**

The Appeals Court dismissed the appeal on the basis that appellant had failed to prosecute the case when he failed to submit a brief. The case concerned discrimination in housing. In addition to the damage award of \$1512.78 appellant was ordered to pay to the original Complainants, the Commission ordered that the appellant provide notice of all properties he was renting, provide a written report of the property he rented and to whom, submit copies of written advertisements relative to rental properties, and provide a plan which would enumerate all criteria for rental decisions in the future to the MCAD. As appellant is one of the largest property owners in Worcester, this order should have wide ranging effect.

■ **Baker v Winchester High School**

The Superior Court entered a judgement by agreement affirming the Commission's award of attorney's fees to the Complainant in accordance with a newly enacted statutory amendment to M.G.L 151(B) which awards fees to the successful party. The commission based the award on the number of hours multiplied by the hourly rate adjusted upward by an assessment of the amount of risk in the case. The Respondent agreed to pay the Complainant \$95,000.

Commissioner Michael Duffy, Chairman

Michael Duffy was appointed to a three year term as Chairman of the Commission by Governor William F. Weld in March 1991. Commissioner Duffy is a Phi Beta Kappa graduate of Trinity College, where he received a Bachelor's Degree in Economics. Before graduating, Duffy worked as a research assistant in both the Connecticut Legislature and the British House of Commons. In 1987, he earned a Master's Degree in Public Policy from Harvard University's Kennedy School of Government. Prior to his appointment to the Commission, Duffy worked for Congressman Christopher Shays, a Republican from Connecticut, and for the Massachusetts Republican Party.

Commissioner Duffy is actively involved in the community. He is a member of the Boston Professional Alliance. He serves on the Board of Governors of the Log Cabin Club and is a member of the Board of Directors of Little Brothers-Friends of the Elderly. As Chairman of the Commission, he is responsible for the overall management of the agency.

Commissioner Georgia Thomas Parks

Georgia Thomas Parks was appointed to the Commission in January 1992. She received a Bachelor's Degree in Social Welfare from Central State College, a Master's Degree from Rutgers, and a Doctorate Degree from Howard University in 1983. Before coming to the Commission, Dr. Parks was a faculty member at Smith College, Rutgers University, and Howard University as well as the University of Nigeria at Nsuka. From 1988 to 1991, she worked with the Massachusetts Department of Mental Health as a Special Assistant and Area Director for the 27-town area of greater Fitchburg and Gardner.

Commissioner Parks is active in many other community organizations, including the National Association of Social Workers, the League of Women Voters, the National Association for the Advancement of Colored People, the Western Massachusetts Black Republican Caucus, and the Pioneer Valley Force for Racial Unity, as well as serving as co-chair of the Amherst Republican Town Committee.

Commissioner Parks manages the MCAD's Springfield office of the MCAD and has responsibility for the western Massachusetts activities of the Commission.

Commissioner Naomi Martell

Naomi Martell was appointed to the Commission in August of 1991. She graduated from the InterAmerican University in San Juan, Puerto Rico in 1973 with a Bachelor's Degree in Sociology. She received a Master's degree in Criminology from the InterAmerican University in 1974. Before coming to the Commission, Ms. Martell worked as an Equal Opportunity Specialist, first at the United States Department of Education, then at the United States Department of Defense. Commissioner Martell has served as vice-president of Inquilinos en Accion, a non-profit community development group. She is co-founder of the Boston chapter of Image, a national organization focusing on the improvement of employment opportunities for Hispanics, and is a member of the Massachusetts Hispanic Political Coalition.

According to Massachusetts General Laws, Chapter 6, Section 6, "The Governor shall appoint an Advisory Board to the Commission, consisting of not less than twenty-one persons, who shall serve at his pleasure...The Board shall advise the Commission and the Governor on matters of policy affecting the Commission, and shall review the implementation of the Commission's programs and policies and from time to time report their conclusions to the Commission and the Governor."

Statewide Advisory Board Members:

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|--------------------------------------|---------------------------------------|
| ■ Marjorie Perry,
<i>Co-Chair</i> | ■ Tom Saltonstall,
<i>Co-Chair</i> |
| ■ Naomi Adelberg | ■ Harold Langford |
| ■ John Adkins | ■ Patricia Lomans |
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| ■ Linda Giles | ■ April Maselli |
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| ■ Lawrence Hogan | ■ Nam Van Pham |
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| ■ David LaFontaine | ■ Glendora Putnam |
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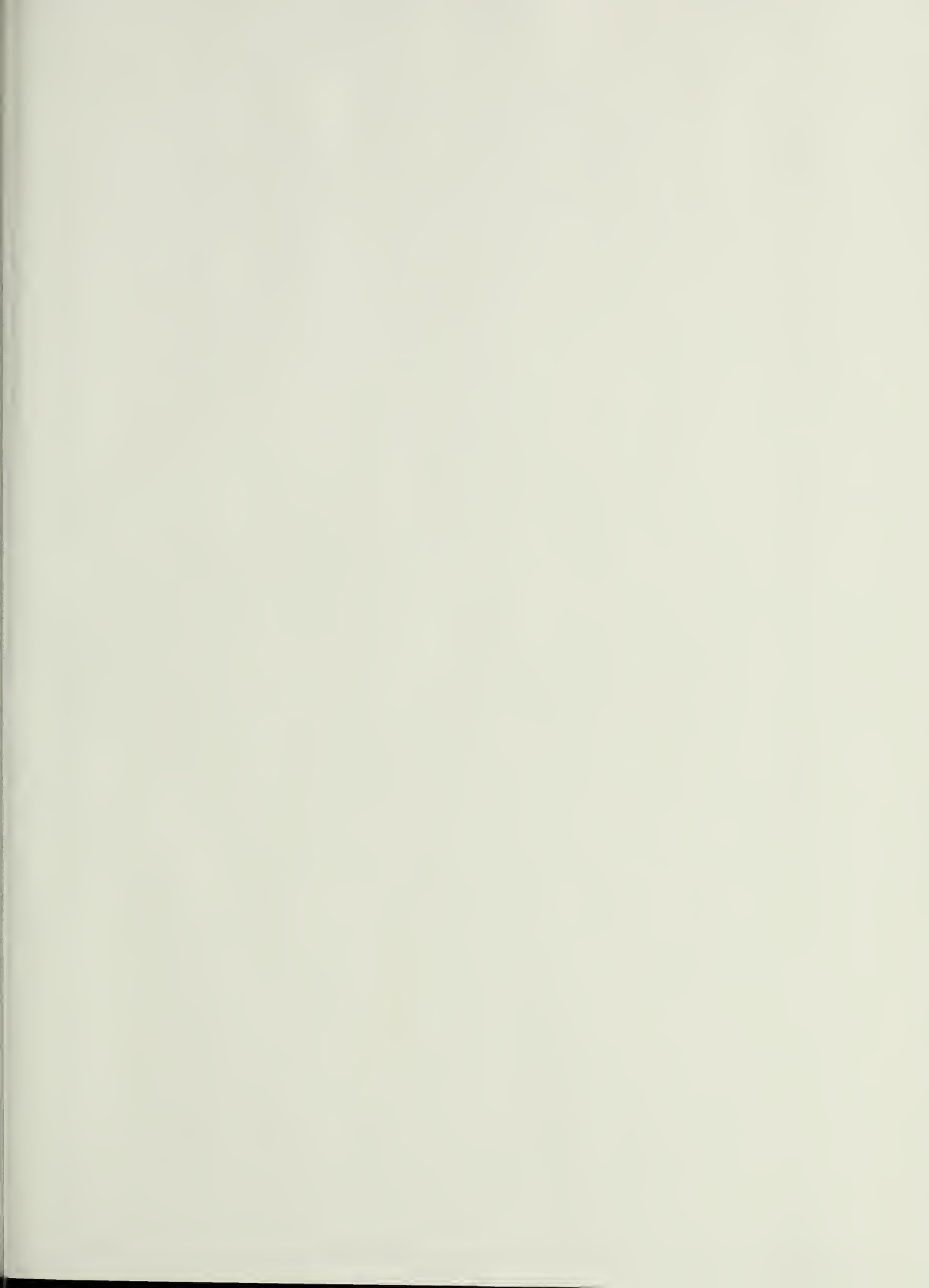
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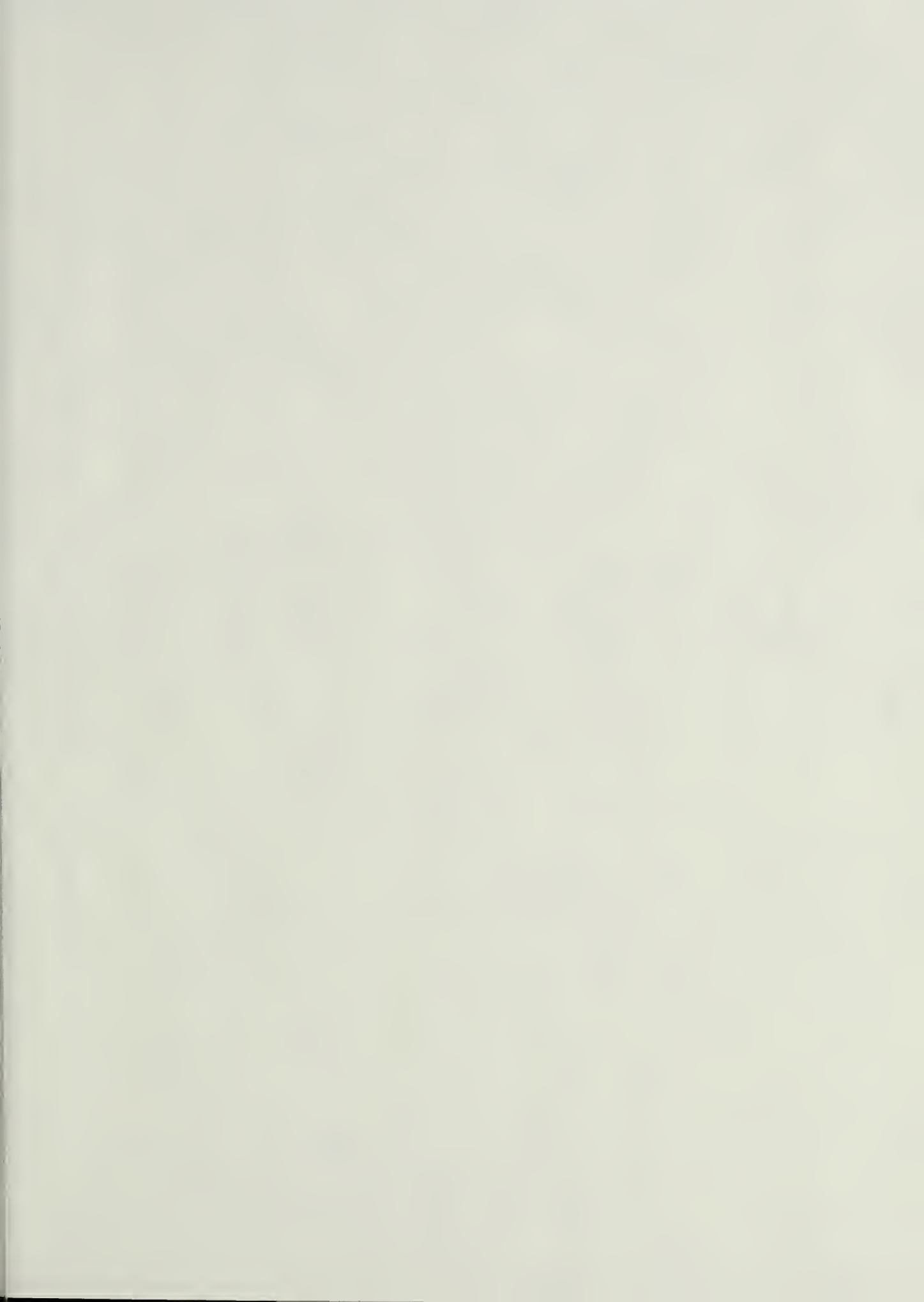
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